



LAW COMMISSION OF INDIA

TWELFTH REPORT

(Income-tax Act, 1922)



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CHAIRMAN
LAW COMMISSION
NEW DELHI,
September 26, 1958.

Shri Ashok Kumar Sen
Minister of Law,
Government of India,
New Delhi.

My dear Minister,

I have great pleasure in forwarding herewith the Twelfth Report of the Law Commission on the Income Tax Act.

2. At the request of the Government of India, the Commission agreed to take up the revision of the Income Tax Act and entrusted the task to a Committee consisting of Shri P. Satyanarayana Rao, Shri G. N. Joshi and Shri N. A. Palkhivala who was specially appointed a Member for the purpose of the revision of this Act.

3. The Committee held more than nine meetings, some of which were spread over several days and formulated a scheme for the revision of the Act. Some aspects of the work as well as the scheme were discussed at meetings of the Statute Revision Section of the Commission held on the 22nd September, 1956 and the 29th March, 1958. A draft Report prepared by Shri P. Satyanarayana Rao, the senior Member of the section of the Commission, dealing with statute law revision, was circulated to all Members of the Commission and their views invited thereon. These views together with the draft Report were discussed at a meeting of the Statute Revision Section held on the 23rd and 24th August, 1958. Some suggestions made by Members at this meeting were accepted and it was left to the Chairman and Shri P. Satyanarayana Rao to finally settle the Report in the light of the discussion.

4. Shri G. S. Pathak, being outside India, is unable to sign the Report. But he concurs in the recommendations and has authorised the Chairman to sign the Report on his behalf. Dr. N. C. Sen Gupta and Shri D. Narasa Raju are unable to come down to Delhi to sign the Report but similarly concur in the recommendations and have authorised the Chairman to sign the report on their behalf. Dr. N. C. Sen Gupta while expressing his concurrence with the Report has added a separate note on certain points.

5. The Commission wishes to acknowledge the services rendered by Shri S. A. L. Narayana Row, Commissioner of Income Tax, Shri N. Srinivasan, Deputy Secretary in the Ministry of Finance, and Shri K. N. Srivastava, Income Tax Officer, in connection with the preparation of this Report.

6 The Commission also wishes to place on record its appreciation of the services of its Deputy Draftsman Shri P. M. Bakshi in preparing the report and drafting the clauses. The assistance rendered by Shri B. Bhujanga Rao, Private Secretary to Shri P. Satyanarayana Rao in drawing the report also deserves mention.

Yours sincerely
M. C. SETTAI VAD.

CONTENTS

Paragraphs

Pages

INTRODUCTION

1-4	Need for simplification and reference to the Law Commission	1-2
5-8	Scheme of Simplification	2
9	Alteration of tax structure essential for simplification	2
10-11	Analogous statutes	2
12-13	Changes proposed in the Act	3
14-17	Chapter I. Preliminary.	3-5
18-22	Chapter II. Basis of charge	5-7
23-29	Chapter III. Incomes which do not form part of the total income	7-9
30-40	Chapter IV. Computation of total income	9-12
41	Chapter V. Incomes of other persons, included in assessee's total income.	12
42-44	Chapter VI. Aggregation of income, and set-off or carry forward and set off of loss	12-13
45-48	Chapter VII. Incomes on which no income-tax is payable	13-14
49-50	Chapter VIII. Rebates and reliefs	14
51	Chapter IX. Double taxation relief	15
52-53	Chapter X. Provisions against avoidance of tax.	15
54-55	Chapter XI. Super Tax	15-16
56-57	Chapter XII. Determination of tax in certain special cases	16
58	Procedural provisions	16-17
59-61	Chapter XIII. Income-tax authorities	17-19
62	Chapter XIV. Procedure for assessment	19-20
63-64	Chapter XV. Liability in special cases	20-22
65	Chapter XVI. Special provisions applicable to firms	22-24
66	Chapter XVII. Special provisions applicable to companies	24
67-85	Chapter XVIII. Collection and recovery of tax.	24-42
86	Chapter XIX. Tax deemed to have been paid on dividends	42-43
87	Chapter XX. Refunds.	43
88-104	Chapter XXI. Appeals and revisions	43-55
105	Chapter XXII. Penalties imposable by Income-tax authorities	55
106	Chapter XXIII. Offences and prosecutions	55
107	Chapter XXIV. Recognised provident funds	55
108	Chapter XXV. Approved superannuation funds	56
109	Chapter XXVI. Miscellaneous	56
110	Schedules	56-57
111	Scheme of notes on clauses.	57
112	Increase in number of sections	57
113	Scheme of Appendices	57
114	Lists appended to the report	57
	List I—List of changes	58-71
	List II—List of recommendations	72-76

APPENDICES

Appendix I.—Showing the proposals in the form of draft clauses. (Detailed index is given at the beginning of the Appendix)	77-297
Appendix II.—Comparative tables.	298-319

NOTES ON CLAUSES

Notes on clauses	320-492
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INTRODUCTION

1. There is hardly any Act on the Indian Statute Book which is so complicated, so illogical in its arrangement, and in some respects so obscure as the Indian Income-tax Act, 1922. Courts and commentators have commented on the illogical arrangement of the provisions of the Act. It has been repeatedly pointed out that the amendments made from time to time to the Act, directed as they frequently are at stopping an exit through the net of taxation freshly disclosed, are too often framed without sufficient regard to the basic scheme upon which the Act originally rested. Provisions dealing with the same topic or subject-matter are scattered through the various Chapters of the Act, and only a thorough knowledge of the whole Act would enable any one to find out all the provisions bearing on a certain point. Added to the illogicality of the arrangement are two other defects, inaccuracy in the use of language and a degree of obscurity which make it difficult to have a glimpse of the real intention of the legislature. As Lord Wrenbury said (with reference to the corresponding Act of the United Kingdom), "No reliance can be placed upon an assumption of accuracy in the use of language in these Acts".¹

Need for simplification and reference to the Law Commission.

2. The hopeless confusion into which the Income-tax law has fallen is mainly due to precipitate and continuous tinkering with the Act by the legislature. The amendments to the Income-tax Act have been so short-sighted and so short-lived as to rob the law of that modicum of stability which is essential to its healthy growth. Before the provisions of the Act can be sufficiently clarified by the judicial process, new provisions are substituted in their place. In legislation as in other fields of human activity, it is well to bear in mind the dictum of Bacon, "Tarry a little, so, that we may make an end the sooner." Stability is most essential to the proper administration of a taxing statute, and if the tax structure of this country is to be put on a sound footing, it is essential that a halt should be called to the making of ill-digested amendments in a frenzy of hurry which has characterised the history of income-tax law of the last few years.

3. The Government has asked us to revise the Income-tax Act so as to make its provisions more intelligible without affecting its basic tax structure. The task is difficult, and, as the Codification Committee in England said, "to expect from us a codification of the law of income-tax which the layman could easily read and understand was a vain hope, which only the uninstructed could cherish".² It

¹ *Rex v. Kensington Income tax Commissioner*, 6 T. C. 613, 623 (H.L.)

² Report of the U. K. Committee on Codification of Income-tax Laws Cmd/5131, para 26, quoted in the Final report of the Royal Commission on the Taxation of Profits and Income, CMD/9434 page 330, para. 1080.

is perhaps possible to make the provisions of the Act more logical and clearer without affecting the tax structure, but it is certainly not possible to make the Act simpler without encroaching upon at least the fringe and verge of the tax structure. However, we have made an attempt to arrange the provisions of the Act in a more logical manner and also to make them simpler and clearer. We have also codified some of the principles well established by decisions but not contained in the provisions of the present Act.

4 In November, 1956, we issued a press communique and invited suggestions in this behalf. We received suggestions from various individuals and bodies. We have considered these suggestions in redrafting the Act.

Scheme of simplification. 5 As the first step in the simplification of the Act, we have made a fairly logical rearrangement and re-grouping of the sections of the Income-tax Act. Each chapter deals with a particular topic.

6 The next step was simplification of the language of the Act. This was done by splitting up the present sections, which run into several pages into independent sections. Wherever possible, provisos were removed and were converted into independent provisions of the Act.

7 As our terms of reference implied the restriction that the tax structure should not be altered, no major change affecting the substance of the law has been made in the substantive provisions.

8 We, however, felt that a few minor changes in the substantive parts and a few major changes in the present procedural provisions would make for simplification. These changes have been made and will be indicated in the appropriate places.

Alteration of tax structure essential to make for simplification. 9 We would like to say at the outset that there can be no real simplification of the Income-tax law without a simplification of the tax structure. As this was beyond the purview of our work, our task of simplification has been greatly hampered.

Analogous statutes. 10 We have examined the Income-tax Acts of other countries to study the scheme of arrangement of the sections and the manner in which analogous provisions have been drafted in those Acts. We have derived considerable help from them. We wish the Indian Legislature would simplify the tax structure of this country on the lines adopted by some other progressive countries.

11 We may also add that in framing our proposals we have not been unmindful of the recent taxing statutes enacted in India such as the Estate Duty Act, the Wealth Tax Act, the Expenditure Tax Act and the Gift Tax Act. We have examined these statutes and where we thought desirable drawn upon the provisions of these statutes in framing our proposals.

12. We now proceed to indicate the lines on which the Act has been redrafted and the important changes effected by us. Changes proposed in the Act.

13. The changes made by us fall into two categories :

- (1) changes of substance, and
- (2) changes of form.

Changes of substance are discussed in the succeeding paragraphs; while changes of form or improvements in drafting will be explained in "Notes on clauses".

There are certain changes which have not been embodied in the draft clauses in Appendix I, but which we regard as desirable. Our recommendations as to such changes will be found either in the discussion in the body of this Report or in the notes to the relevant clause in "Notes on clauses", or, in the list of recommendations annexed to this part of the Report. (Recommendations not embodied in Appendix I).

14. As in the present Act, the preliminary Chapter contains only two sections. One is the section headed 'Short title, extent and commencement' and the other is the section containing definitions. Chapter I Preliminary.

Several new definitions were found necessary and have been inserted. Of these, the following deserve notice— New definitions.

A definition of assessment has been added to make it clear that "assessment" includes re-assessment. "Assessment"

This expression has been used by decisions of courts and is well-understood as meaning the financial year for which the assessment is being made at the rates prescribed by the Finance Act of the year concerned. A definition of 'assessment year' has therefore been inserted in the Act. "Assessment Year".

These are two new definitions which were found necessary. In respect of several incomes which are included in the total income, abatement of the tax is given at the average rate of income-tax. The present Act provides a complicated process for the computation of the abatement in section 17, where the method of working the average rate of income-tax is referred to. It was found convenient to give definitions of these two expressions and to refer to them in the appropriate sections instead of repeating a long clause every time. "Average rate of Income-Tax".
"Average rate of Super Tax".

The basis of charge under the Act varies according as a person is a resident of India or a non-resident. The expressions 'Resident' and 'Non-resident' have specific meanings for the purpose of the Act. It was, therefore, felt necessary to introduce these two new definitions in the Act. "Non-resident" and "Resident".

"Tax"

A definition of 'tax' has been introduced Under this definition, 'tax' means both income-tax and super-tax chargeable under the provisions of this Act The definition will make it clear that where income-tax is referred to in any provision of the Act only income-tax is meant, and where super-tax is referred to in any provision of the Act, only super-tax is meant Where 'tax' is referred to, both income-tax and super-tax are meant

Changes in
existing defi-
nitions.
"Assessee"

15 The definition of "assessee" has been amplified so as to include all the various classes of persons who may become liable for assessment or payment of tax or other sum.

"Capital as-
set".

Item (iii) of existing section 2(4A), which excludes, from the definition of 'capital asset', land from which the income derived is agricultural income has been redrafted by substituting the words "agricultural land in India". Land lying fallow and yielding no income should, it is felt, be excluded from this definition. Hence this change

"Income"

The definition of "income" has been amplified so as to include profits and gains This will obviate the necessity of repeating the lengthy expression 'income, profits and gains' in the substantive sections Wherever practicable only the expression "income" has been used in the substantive sections

Scheme of
substantive
provisions

16 The substantive provisions of the Act relating to one topic or subject matter are at present spread all over the Act This has naturally led to considerable difficulty in ascertaining a person's liability under the Act For example, section 42 which deems certain incomes to accrue or arise in India is separated from section 4 which deals with the charge to tax of incomes accruing or arising in India Similarly, while most incomes excluded from the total income are dealt with in section 4(3) of the Act, there are some provisions pertaining to exclusion in other sections e.g. sections 14(1), 25(3) and 25(4) etc We have, therefore, in grouping the sections in various Chapters, taken care to see that all the provisions pertaining to a particular subject or topic are placed in the same Chapter

17 The substantive provisions are at present contained mainly in Chapters I, III and IX in the existing Act Chapter III deals with several subjects It deals with the basis of charge, the computation of total income under various heads, the rebates on life insurance premia and other matters and the provisions pertaining to salaries, wages and other matters In the draft of the Act which we have prepared the substantive provisions pertaining to income-tax and super-tax have been classified and grouped in eleven Chapters which deal with the following subjects .

*The notes to clause 2 (5), in the Notes on clauses, contain a detailed discussion.

- (i) Basis of charge. (Chapter II)
- (ii) Incomes which do not form part of the total income. (Chapter III)
- (iii) Computation of total income. (Chapter IV)
- (iv) Incomes of other persons, included in the assessee's total income. (Chapter V)
- (v) Aggregation of income and set-off or carry-forward of losses. (Chapter VI)
- (vi) Incomes on which no income-tax is payable. (Chapter VII)
- (vii) Rebates and reliefs. (Chapter VIII)
- (viii) Double taxation relief. (Chapter IX)
- (ix) Provisions against avoidance of tax. (Chapter X)
- (x) Super-tax. (Chapter XI)
- (xi) Determination of tax in certain special cases. (Chapter XII).

18. All the provisions which concern the charge of Chapter I income-tax have been brought together in this Chapter. Basis of charge. The definition of 'previous year' is one of the essential ^{g.c.} criteria for the basis of charge and has been included in this Chapter.

The basis of charge has been expressed more generally than in the present Act, by referring to every "person" in the charging section. This is in conformity with the laws of other countries'.

19. In the present Act the scope of total income is given sometimes in relation to the nature of income and sometimes in relation to the residence of the assessee. To avoid any confusion, the scope of total income of residents and non-residents has been put in two different sub-sections.²

20. Several provisions of the Act refer to income which is "deemed" to accrue in India, or is deemed to be received in the previous year. We have brought all these provisions together and placed them in proximity to each other³.

21. At present, there is no provision which determines Residence. the residence of an artificial juridical person. A new sub-clause⁴ has therefore been introduced in the section relating to 'Residence' providing that persons other than those for which a specific provision has been made, would be resident in India, unless the control and management of their affairs is situate wholly outside India.

¹ See section 2(1), Canadian Income-tax Act, 1948; section 5(1), South African Income-tax Act, 1941; and section 17, Australian Income-tax etc. Act, 1936—53.

² See clauses 4 (1) and 4 (2), App. I.

³ See clauses 7-10, App. I.

⁴ See clause 6 (4), App. I.

22 The present Act (section 4) speaks of three categories of persons

- (i) Persons who are resident in India;
- (ii) Persons who are not ordinarily resident in India, and
- (iii) Persons who are not resident in India

So far as the second category is concerned certain incomes mentioned in section 4 accruing outside India are not to be included in their total incomes. This category is also of importance for the purpose of certain transactions mentioned in sections 42(2) and 44D but is of no importance for any other purpose. The Taxation Enquiry Commission considered the question whether the category of "not ordinarily resident persons" should be continued for the purpose of assessment, and expressed the view that there was no justification for continuing the exemptions given to this category of cases any longer. We are in entire agreement with the view expressed by the Taxation Enquiry Commission. Our primary recommendation is, therefore, that this category should be abolished. If however, the Government wishes to continue the exemptions, we would prefer to put in Chapter III the items which are to be excluded from the total income in the case of persons not ordinarily resident. We would also mention the other liabilities of persons not ordinarily resident at the appropriate place. We have not therefore, referred to persons 'not ordinarily resident' in the section "Scope of total income". We would like the basis of charge to be determined only with reference to one question, namely, whether the person is resident in India or not resident in India.

The definition of "ordinary residence" in section 4B is couched in a negative form, with the result that the section is ambiguous in its import. The view taken by the Madras and Travancore-Cochin High Courts¹ is that residence in India for less than nine years out of the preceding ten years is sufficient to make the assessee "not ordinarily resident", whereas the view taken by the Bombay High Court² is that in order to claim the status of "not ordinarily resident" the requisite condition is that the assessee should be non-resident in India in nine out of the ten years immediately preceding the relevant accounting year. Under the Madras view non residence in one of the said nine years would make the assessee "not ordinarily resident", even if he has been resident in the remaining eight years. Under the Bombay view non-residence in each of the nine years is required before the assessee can be regarded as "not ordinarily resident". We understand that the Central Board

¹ Vide T. E. C. Report (1933-1934), Vol II, Chapter II, para 11 pages 28-29

² Vide clause 11 (4) (iv) App I

³ *Marimuthu Pillai vs C I T* (1945) 12 I T R 186, 188 *Srinivasiah Chettiar vs C I T* 1947 I T R 418, 424 *Bawa vs C I T* (1955) 27 I T R 453

⁴ *Mambhat Patel vs C I T* (1953) 23 I T R 27

of Revenue has approved of the Madras view in some cases where the question arose for its consideration. If, contrary to our recommendation, the concept of ordinary residence is retained, it would be advisable to redraft the definition of "ordinary residence" so as to make it clear which of the two conflicting views is the one intended by the Legislature.

We would like to draw the attention of the Government to two provisions of the Income-tax Act which deserve to be deleted. The first is section 4(1)(b)(iii), taxing an assessee in respect of the remittances by him into India out of the income of past years (*i.e.*, years prior to the relevant accounting year). Such a provision has only the effect of preventing capital being brought into this country at a time when the country badly needs capital. It is true that the effect of this provision has been to a large extent counteracted down by the fourth and fifth provisos to section 4(1), which were inserted by the Indian Income-tax (Amendment) Act, 1953; but there is no reason why any tax on remittances out of past year's profits should be levied even in a modified form. To tax the aggregate of the profits of the past twenty years as the profits of the year in which they are remitted into India is unjustifiable on principle, apart from the fact that, as noted above, it results in capital being kept out of the country.

Another provision which we regard as still less supportable is section 4(1), Explanation 4, which makes an assessee liable to tax if he moves his past profits from one part of India into another, that is, from the erstwhile merged territories or Part B States, into another part of the country. India is one country and it is wrong on principle to tax the movement of money from one part of the country to another. Besides, a fairly long period has already elapsed since the integration of the former native States into the Republic of India, and it would be anachronistic to retain any longer provisions which were appropriate at a time when the political map of India was different from what it is today.

We recommend that these two provisions, namely, section 4(1)(b)(iii) and section 4(1), Explanation 4, should be deleted. (We have not, however, given effect to this recommendation in the draft clauses in Appendix I, since this would affect the tax structure).

23. The exemptions in the Act are of several kinds. Chapter III Some incomes are not liable to inclusion in the total income. Some incomes are liable to inclusion in the total income but are not liable to pay any tax¹. It was felt that this distinction should be brought out prominently by grouping together provisions pertaining to these two categories separately and putting them in different Chapters. Incomes which under the provisions of the Act, are not to be included in the total income have been put together in Chapter III.

Chapter III
Income which do not form part of the total income.

¹ See section 16 (1) (a).

24 A few of the exemptions notified under section 60 under which the income is to be excluded from the total income, have been mentioned here', as it was felt that such important notifications should be prominently brought to the notice of the tax payer, e.g., income of a University or other educational institution, scholarships and others.

The exemptions have, wherever possible, been classified into well-defined categories e.g., non residents, foreign residents, interest and others

25 The provision in existing section 4(1) 2nd Proviso for incomes accruing outside India which are to be excluded from the total income of a person who is not ordinarily resident has been 'retained in the draft proposed by us. If the Government accepts our primary recommendation', this provision' would have to be omitted

The provision in section 4(3) (xiv), relating to the exclusion of remuneration received by employees of foreign enterprises is sought to be confined to foreigners, since ✓ there is no reason why the exemption should be enjoyed by Indian citizens'

The provision in section 4(3) (xiva), relating to salary received by certain foreign technicians is sought to be slightly widened so as to cover salary received for work done before the actual commencement of business'.

26 The provisions of section 4(3) (i) and (ii) (income of religious and charitable trusts) have been the subject-matter of interpretation by various courts. It appears to us that the intention of the legislature is not clear from the present language of the Act. It also appears to us that the distinction between a trust and an institution has not been borne in mind in drafting section 4(3)(i). An institution is something different from a trust. A trust is not necessarily an institution'

27 In our opinion' the intention of the legislature in framing section 4(3)(i) was to exempt three categories of income —

- (i) Income from property held under trust for charitable or religious purposes.
- (ii) Income from business held under trust for religious or charitable purposes subject to the conditions mentioned in proviso (b) to section 4(3)(i)

¹ Vide clause 11 (17) and 11 (24), App I

² See para 22 above

³ Clause 11 (4) (v) App I

⁴ See clause 11 (8) App I

⁵ See clause 11 (9) App I

⁶ *Minister of National Revenue vs Trusts and Guarantors Co Ltd*, (1939) 4 AER 149 D C

⁷ The notes to clause 12 may be perused for a detailed examination of the position.

- (iii) Income from a business carried on on behalf of a religious or charitable institution, subject to the conditions mentioned in proviso (b) to section 4 (3)(i).

28. It appears to us that in view of the decision of the Supreme Court¹ it will be difficult to exclude "business" from "property" which is the subject of a trust. But, it is also clear to our minds that income from business should be exempted only if the conditions mentioned in proviso (b) are fulfilled. We have, therefore, redrafted section 4 (3)(i) to make this position clear².

29. We are of the opinion that the legislature intended also to exempt the income from a business carried on by a religious or charitable institution, if the conditions mentioned in proviso (b) are satisfied. As the exemption of the income from a business carried on on behalf of a religious or charitable "institution" is not covered by the category of income from business held under "trust", we have provided³ for the exemption of such income of a religious or charitable institution.

30. As stated above⁴, the provisions regarding computation of total income, computation of income under various heads, and other matters are contained in Chapter III of the present Act along with other provisions pertaining to exemptions and other matters. We consider that the provisions pertaining to the computation of income under each head specified in section 6 should all be grouped together under the Chapter "Computation of total income".

Chapter IV
Computation
of total income.

Though there are separate modes of computation under each head, we find a basic scheme underlying the method of computation under all the heads. The Act first provides for different categories of income being assessed under different heads of income. There is, then, a provision for deducting from the gross income under each head expenditure incurred for earning that income. There is, again, a provision which prohibits certain deductions in computing the income under that head. Having regard to this basic scheme of the Act, we have provided under each head a section which deals with the categories of income or the nature of income which is assessable under that particular head, e.g., under salaries, property, and business. Deductions to be allowed or not in computing the income under each head are separately provided. The sections pertaining to a head of income are grouped under sub-titles, for example, A—Salaries, B—Interest on Securities, C—Income from house property and so on.

¹ *J. K. Trust vs. Commissioner of Income-tax*, (1957) 32 I. T. R. 535 (S.G.).

² See clauses 12 (2) and 12 (4), App. I.

³ See clause 12 (3), App. I.

Income from
other sources.

40 The provisions pertaining to the computation of income from other sources have now been put after the provisions pertaining to the computation of all other incomes including capital gains. The section is thus a residuary section for computing the income from all sources for which no provision has been made earlier.

We would like to draw the attention of the Government to the fact that the present system of taxing dividends creates a good deal of difficulty. At present, companies are taxed at a very heavy rate under the annual Finance Act but section 18(5) and 49B(1) of the Income-tax Act treat income-tax paid by companies as paid on behalf of the shareholders and allow the shareholders credit for the income tax paid by the company. The tax to be so credited to the shareholder has to be arrived at after an elaborate computation under the process known as "grossing up" of dividends. This process, dealt with in section 16(2) of the Income-tax Act, is a complex one. *Moreover, difficult questions often arise in practice as to whether dividends are declared out of the taxable profits of the companies or not since money has no ear mark and it is not easy in practice to identify the fund out of which a dividend has been declared.* This difficulty has been accentuated after the substitution of the present rule 14 of the Income-tax rules prescribing the new form of certificate to be furnished by the company to the shareholder along with the dividend warrant. It would make the law much simpler and easier to administer if at least public companies are taxed at a very low rate and the shareholders are taxed at the normal rates without any credit being given to them for the tax paid by the companies. We have not made any changes on this point in the draft clauses in Appendix I, since any such change would affect the tax structure, but we feel that the Government should consider the simplification of the law on this point. The notes to the relevant draft clause may also be perused in this connection.

Chapter V
Incomes of
other persons
included in
the assessee's
total income

41 Income which belongs to other persons is in certain circumstances liable to inclusion in the total income of the assessee, e.g., under sections 16(1)(c) and 16(3). These have been grouped together in this Chapter. The language of section 16(1)(c) leads to some confusion. The provisions pertaining to settlement of income and transfer of property have therefore been separately dealt with.

Chapter VI
Aggregation
of income
and set off or
carry forward
of losses

42 The method of computation of the total income, the method of computing the loss and the right to carry forward such loss to later years all pertain to the computation of total income after the income under each head has been separately computed. All these provisions have therefore, been grouped together in this Chapter.

Under section 24 as it stands at present, a loss under a head other than capital gains is set off also against a loss under the head "Capital gains". Since the rate of

tax in the case of capital gains is lower than the rate for other heads, this provision for the compulsory set off of other losses against capital gains is unfair to the assessee. The benefit which he derives from the set off is smaller than what he would have derived if the loss were set off against other income. We have, therefore altered the provision¹ by barring the set off of a loss under any head (other than capital gains) against income under capital gains, so that for the purposes of set off, capital gains now becomes a completely independent category.

43. The second proviso to section 24(1) does not bring out clearly the intention of the legislature. We have now put the proviso in the form of an independent section² so as to leave no doubt as to its meaning. The provisions pertaining to set off and carry forward of the losses of registered and unregistered firms in the assessment of the firms and their partners have also been put in separate sections³.

44. It is now well settled by a series of decisions⁴ that a cash credit whose nature and source have not been explained is to be treated as the income of the year in which it occurs. There are similar decisions⁵ regarding investments whose nature and source are not explained. These decisions have been codified in two sections⁶ of this Chapter.

45. As stated at the outset, the present Act does not make a clear distinction between the three categories of exemptions:

Chapter VII
Incomes on
which no
Income-tax
is payable.

- (i) Incomes which do not form part of the total income and are altogether excluded from computation;
- (ii) Incomes which form part of the total income, but which are exempt from tax;
- (iii) Expenditure incurred by an assessee, on which an abatement is given.

The present Act uses the words "the tax shall not be payable" in respect of all the three categories; e.g.—

- (a) Any sum received by a member of a Hindu Undivided Family as a member of such family—S. 14(1).
- (b) The taxed share of a partner of an Unregistered Firm—S. 14(2) (a).
- (c) Payments made to effect insurance on the life of the assessee or on the life of a wife or husband of the assessee—S. 15(1).

¹ Vide clauses 37 (1) and 75 (1), App. I.

² See clauses 78 (1) and 76 (1), App. I.

³ See clauses 76 to 79, App. I.

⁴ See clause 70, App. I. and the notes thereto.

⁵ See clause 71, App. I. and the notes thereto.

⁶ Clauses 70-71, App. I.

46 It would be inappropriate to use the same language in respect of the three categories. We consider that the expression 'tax shall not be payable by an assessee' is inaccurate in respect of expenditure incurred by the assessee, as such expenditure is not part of his income. We have, therefore, separated these three categories and put them into three different Chapters. We have already dealt with the first category in the Chapter in which all the exclusions from total income have been gathered together. The incomes which are included in the total income but exempt from income-tax have been gathered together in this Chapter. The provisions of the Act which allow a rebate in respect of expenditure incurred by the assessee, e.g., sections 15(1), 15B etc. have been grouped together in the Chapter headed 'Rebates and reliefs'.

47 In respect of several of the incomes referred to in the Chapter under discussion the exemption is confined to income-tax and is not applicable to super-tax. To avoid confusion the expression 'income-tax shall not be payable' has been used in this Chapter. The exemptions applicable to super-tax have been specifically mentioned, in the Chapter relating to Super-tax.

48 In view of the present scheme of taxation (under the Finance Act, 1958) under which no deduction is allowed for earned income we consider it unnecessary to continue section 15A in the Act. We have therefore omitted the latter part of section 15A, leaving it to the Government to omit its earlier part also.

Chapter VIII
Rebates and
Reliefs

49 We have discussed above the unsuitability of the present language in regard to abatement of tax on expenditure by the assessee. We have made the necessary verbal changes.

50 This Chapter provides for a deduction, from the income-tax payable on the total income, of an amount equal to the income-tax calculated at the average rate of income tax on the amounts on which the assessee is entitled to a rebate, for example life insurance premia, and contributions to Provident Fund. The language of this Chapter has been borrowed from the U.K. and Ceylon Acts.

We have slightly widened the provision in section 60(2) (relating to power of the Central Government to grant appropriate relief where salary is paid in arrears and other matters), so as to cover "perquisites" also. The power will thus be available where a perquisite enjoyed in the form of cash is paid in arrears.

1 Chapters I, VII and VIII, App. I

2 Chapter VIII, App. I

3 Chapter V, II App. I

4 Chapter VI App. I

5 Vide paragraph 45 and 46 above

6 See section 219 (1) U.K. Income-tax Act, 1952, and section 14 (b) of the Ceylon Income-tax Ordinance

7 See clause 90 App. I

51. The provisions of the Act which pertain to double taxation relief have been gathered together in this Chapter. Chapter IX
Double
Taxation
Relief.

52. This Chapter deals with the provisions against avoidance of tax by means of transactions with non-residents and by dealings in securities-cum-dividends and in other ways. We have also dealt in this Chapter with the provision pertaining to avoidance of tax in the hands of a resident principal. Chapter X
Provision
against avoid-
ance of tax.

53. As regards transactions in securities the present law (section 44F) deems the interest to accrue *de die in diem*. As a tax avoidance provision it would be very appropriate to tax the interest wholly in the hands of the person transferring the securities before the due date of maturity. We have altered the provision¹ accordingly.

54. The provisions pertaining to super-tax are contained in Chapter IX of the Act. There are a few other provisions not included in that Chapter which pertain to super-tax, e.g., section 23A which provides for the levy of additional super-tax in the case of certain companies. All the provisions relating to super-tax have been brought together in this Chapter. In regard to super-tax, the basic provision that the total income for super-tax shall be the same as the total income for income-tax has been retained², but the provisions which exclude certain incomes from computation of the total income have been made into separate sections³. Chapter XI
Super-tax.

In connection with section 23A, we may draw attention to the latest pronouncement of the Privy Council⁴, on an identical provision of a foreign statute. It decides that if having regard to the smallness of profits or past losses or any other relevant factor or circumstances the payment of a dividend or a large dividend than that declared would be unreasonable, no order should be passed under section 23A. We have not made any change in the existing section on this point; but we think that the Income-tax Officer should not pass an order under section 23A where the declaration of a dividend or a larger dividend would be unreasonable on account of current business requirements.

We may also draw the attention to the inconsistency inherent in the present provisions relating to tax on distributed and undistributed profits. Section 23A of the Income-tax Act taxes undistributed profits, while the provision usually inserted in the annual Finance Act has the effect of increasing the tax on excessive distribution of profits. This inconsistency must be removed. A detailed

¹ Vide clause 97 (3), App. I.

² Vide clause 99, App. I.

³ Vide clauses 104 to 108, App. I.

⁴ *C.I.T. vs Williamson Diamonds Ltd.*, 1958 A.C. 41 (P.C.).

discussion of the subject appears in the notes to the relevant draft clause. We have, of course, not made any change in the existing section on this point, but we recommend that the Government should take steps as indicated.

55 We have placed under a separate group provisions relating to rebate on super-tax on certain types of expenditure or reliefs in respect of certain incomes as in the case of newly established industrial undertakings¹. The Act is not clear as to whether certain incomes exempted from super-tax are to be included in the total incomes for purposes of rate or are to be excluded altogether, for example, the exemption [in section 14(3)] in respect of co-operative societies. In our draft we have borne in mind the distinction between an item which is excluded from the total income² and an item on which only a relief is applicable at the average rate of super-tax³.

Chapter XII
Determina-
tion of tax in
certain spe-
cial cases

56 In this Chapter we have dealt with cases which are not covered by the normal rules regarding the computation of total income or the rate of tax applicable thereto. The topics dealt with here include the computation of tax for income comprising exempt incomes, liability in respect of compensation payable, the rate of income-tax and super tax applicable to non-residents, the mode of computation of income-tax on capital gains, and so on. We have made it clear⁴ that in the case of compensation payable to and received by a registered firm, the special mode of computation mentioned in the Act applies to the partners. The position is not clear in the Act.

57 In respect of capital gains the provisions of the present Act are not easily intelligible, and we have therefore clarified the position by expressing the computation of tax on capital gains in the form of a mathematical formula⁵.

Procedural
provisions

58 The provisions pertaining to income-tax authorities and procedure are at present contained mainly in Chapters II, III, IV, V and V-A. All these provisions have been brought together, with section 64 which pertains to the place of assessment and section 54 which pertains to disclosure of information by public servants. These provisions have been divided into the following Chapters.

(i) Income-tax authorities (Chapter XIII)

(ii) Procedure for assessment (Chapter XIV).

¹ See clauses 109 to 112, App. I

² Contrast clauses 104-108, on the one hand, with clauses 109 to 112, on the other, in App. I.

³ Vide clause 123 (2), App. I

⁴ Vide clause 125, App. I. Cf. sect. 6 (2) of the South African Income-tax Act, 1951 for the device of mathematical formula.

- (iii) Liability in special cases (Chapter XV).
- (iv) Special provisions applicable to firms (Chapter XVI).
- (v) Special provisions applicable to companies (Chapter XVII).
- (vi) Collection and recovery of tax (Chapter XVIII).
- (vii) Tax deemed to have been paid on dividends (Chapter XIX).
- (viii) Refunds (Chapter XX).
- (ix) Appeals and Revisions (Chapter XXI).
- (x) Penalties imposable by income-tax authorities (Chapter XXII).
- (xi) Offences and prosecutions (Chapter XXIII).
- (xii) Recognised provident funds (Chapter XXIV).
- (xiii) Approved superannuation funds (Chapter XXV).
- (xiv) Miscellaneous (Chapter XXVI).

59. The provisions pertaining to Income-tax authorities are contained in sections 5, 54 and 64 of the present Act. The provisions contained in sections 37, 38 and 39 Chapter XIII Income-tax authorities. Chapter XIII Income-tax authorities. We have, therefore, grouped all these sections in this Chapter.

The present classification of these provisions is not very happy. We have, therefore, classified the provisions pertaining to Income-tax authorities as under:

- (a) Appointment and control,
- (b) Jurisdiction.
- (c) Powers, and
- (d) Disclosure of information.

60. Effect has been given to the observation of the Supreme Court in a recent case¹ by providing that the assessee should be given an opportunity, wherever possible, of being heard before a case is transferred from one Income-tax authority to another:

There is at present no provision in the Act as to the Income-tax authority who should take proceedings where there has been a transfer of the case from one Income-tax authority to another. A doubt has been expressed as to which Commissioner is to exercise jurisdiction when a case has been transferred from an Income-tax Officer under the jurisdiction of one Commissioner to an Income-tax Officer under the jurisdiction of another Commissioner. We have provided specifically for such cases by inserting a new section on the subject². The new provision will also

¹ *Pannalal Binjraj and others vs. Union of India* (1957), 31 I.T.R. 565, 589, A.I.R. (1957) S.C. 397, 410.

² See clause 134, App. I.

meet cases of transfer of a case from one Income-tax Officer to another. A few minor changes made in the various sections have been indicated in the Notes on clauses.

An important addition to the provision relating to disclosure in section 54 (3) is the new provision¹ enabling the Income tax Officer to disclose the substance of the particulars on which he relies (for the purpose of an assessment) to the assessee without, of course, disclosing the name of the person to whom the particulars pertain. This is intended to give effect to the decision of the Supreme Court in the case of *Dhakeshwari Cotton Mills Ltd.*² One other provision added to this section³ enables the Income-tax authority to disclose the facts necessary for the purpose of enabling an officer of the Central Government to levy or realise any tax imposed by it.

A provision has also been added⁴ authorising the disclosure to civil courts of certain documents (like balance-sheets, profit and loss accounts etc.) prepared by companies under the Companies Act, or documents of which copies can be obtained under the Registration Act. As none of these are private documents, there is no harm in permitting their disclosure in cases where the documents are relevant in a proceeding before a civil court. Similarly, we have also added a provision⁵ authorising the disclosure of accounts filed by the assessee before an Income-tax authority when the accounts are required by a civil court for the purposes of proceedings to which the assessee is a party. We do not see any reason why the mere fact that the accounts are lying with the Income-tax authorities should debar their production in court.

One important change which we have made concerning section 5 may also be noticed. Section 5(8) provides that officers and persons employed in the execution of the Act shall observe the orders, instructions and directions issued by the Central Board of Revenue.

As some of the orders and instructions affect assessee in general, we have added a provision⁶ to the effect that orders and instructions of a general nature should be published.

We have also added a clause providing for the return of documents produced by an assessee before any Income-tax authority⁷.

¹ See clause 141 (3) (c), App. I

² (1954) 26 I T R 775

³ Clause 141 (3) (n), App. I

⁴ Clauses 141 (3) (f) (ii) and (iii), App. I

⁵ Clause 141 (3) (f) (i), App. I

⁶ Clause 130 (1), 2nd Prov. 20, App. I

⁷ See clause 136 (4), App. I

61. In view of the fact that we have recommended the abolition of the Appellate Tribunal, the provisions pertaining to the Appellate Tribunal have been omitted from this Chapter.

62. The provisions pertaining to procedure for assessment have been gathered together in this Chapter.

Chapter XIV
Procedure
for assess-
ment.

The Chapter has been divided into sections so as to bring out clearly and prominently the various stages of an assessment. The principal changes made by us in respect of these provisions are given below :—

(1) The date by which the voluntary return is to be filed has been fixed as the 30th day of June¹.

(2) A primary obligation to make a return of income has been imposed² without the necessity of a general notice as under the existing section 22(1).

(3) The provision has been extended to representative assesseees, e.g., agents of non-residents, trustees³ and others.

(4) The person who is to sign the return is mentioned at present in a footnote to the form of return of income. We consider that this provision is so important that it should be embodied as a part of the Act itself. We have, accordingly, added a section on the subject.⁴ We have made special provisions for the signing of returns in the case of mentally incapacitated persons, minors and persons absent from India.

(5) The criteria for making a "best judgment assessment" have been specifically mentioned.⁵

(6) The provisions which are now contained in section 13 have been transferred to this Chapter. The provision has been so drafted⁶ as to avoid any conflict between sections 13 and 23. It has been made clear that section 13 applies only where the accounts are correct and complete. Section 23(4) will apply to cases where the accounts produced are not correct or are not complete.

(7) The Act—section 34(1), 1st Proviso, (ii) enables with the permission of the Central Board of Revenue, the re-opening of assessments without limit of time in cases where the aggregate income which has escaped assessment is over Rs. 1,00,000. We consider that in most of the cases there should be some finality as to an assessment after the lapse of a certain period of time. While protecting the interests or revenue by providing⁷ that where income which has escaped assessment in a particular year is over Rs. 50,000

¹ See clause 143 (1), App. I.

² See clause 144, App. I.

³ See clauses 148, 149, App. I.

⁴ See clause 150, App. I.

⁵ See clause 155 (1) (a) (i), App. I

the proceedings can be re-opened without limit of time, we have provided for a limit of 16 years in all other cases which are now covered by section 34(1)(a) 1st proviso, clause (ii). We would further recommend that even where the income escaping assessment in a particular year is over Rs 50,000 there should be no re-opening of the assessment after the lapse of 16 years from the end of the assessment year concerned. This last recommendation has not been embodied in Appendix I.

(8) In the case of *Parashar vs Vasantsen Duarkadas*,¹ the Bombay High Court held that the provisions of section 34(3) are invalid to the extent to which they allow the assessment of a person other than the assessee to be re-opened without limit of time. We have now provided² that the person whose alleged income is included in the assessment of the assessee should be given an opportunity of being heard before the assessment is completed. This will cure the invalidity of the provision.

(9) At present there is no time-limit for the completion of an assessment made under section 34(1)(a). We think that the proceedings for such assessments should not go on indefinitely. We have accordingly provided³ for a time-limit of four years for the completion of the assessment. The time limit will run from the end of the assessment year in which the notice under section 34 is issued.

Similarly, we have provided⁴ a time-limit of four years in a case where a notice is issued under section 28(3) read with section 28(1)(c) (i.e., notice for the imposition of a penalty where the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars). Under section 34(3) there is no time-limit for the completion of such assessments.

(10) Section 35 has been split into two sections. The rectification of mistakes, strictly so called, is put in one section. Several rectifications which are permitted under section 35 are deemed to be mistakes apparent on the face of the record. All such deeming provisions have been gathered together in another section.

Chapter XV
Liability in
special cases

63 All the provisions of the Act dealing with liability in special cases have been gathered together in this Chapter.

The following topics have been dealt with in this Chapter —

Legal representatives,

Representative assessee (i.e. persons liable as trustees, guardians, managers, agents of non residents etc.),

Executors,

¹ See clause 155 (1) (a) (i) App. I
² (1956) 29 I.T.R. 857 (Bombay H.C.)
³ Vide clause 160 Expt. 3 App. I
⁴ Vide clause 160(2) (a) App. I
⁵ Clause 160(1) (b), App. I

Succession and partition;

Shipping business of non-residents;

Persons leaving India;

Discontinuance of business etc., or dissolution of association;

Royalties;

Liability of State Governments.

64. The principal changes made in respect of these provisions are as under :—

(i) The provision relating to legal representatives has been made more elaborate¹ so as to cover all possible situations.

(ii) A new expression has been coined², namely "representative assessee", to cover all cases where a person is made responsible in an assessment for the income of another person under sections 40, 41 or 42 (as trustee, guardian, Administrator-General, Court of Wards, receiver, agent of non-resident and otherwise). This scheme has been adopted from the South African Act.³ The adoption of this scheme has made for a considerable simplification in drafting.

(iii) A new provision⁴ has been inserted to make the representative assessee personally liable where he disposes of or parts with the assets in his possession after the tax has become payable.

Under the Act, a person liable as a representative assessee (particularly a guardian, trustee, or manager) can be assessed either under the special provisions applicable in such cases (sections 40, 41 and otherwise) or under the normal charging provision in section 3. We feel, however, that such persons should not be chargeable under section 3 when there are special provisions applicable to them. We have, accordingly, added a provision⁵ for the purpose.

The position regarding the rate of tax applicable to income received by a trustee in cases where the shares of the beneficiaries are unknown or where the income is not received on behalf of a particular beneficiary, has been slightly amended⁶ so as to provide that the tax on such income in the hands of the trustee and otherwise will be at the rate applicable to an association of persons; a provision has, however, been added to the effect that where the income is actually received by the beneficiary, the Income-tax Officer has the discretion to tax at the rate applicable

¹ *Vide* clause 168, App. I.

² *Vide* clauses 169-177, App. I.

³ See sections 69-75, South African Income-tax Act, 1941.

⁴ Clause 172, App. I.

⁵ Clause 170 (3), App. I.

⁶ *Vide* clause 174 (a), App. I.

to the beneficiary. We feel that the existing provision in section 41(1), 1st proviso, authorising the levy of tax at the maximum rate (in cases where the beneficiary has other income) is not fair. The sheer accident that a beneficiary has income from other sources, should not be a ground for taxing him at the maximum rate.

(iv) There is at present no provision in the Act for the assessment of executors. We have inserted a new provision¹ for the assessment of executors, based on the corresponding provision of the Ceylon Act.

(v) The provisions of section 25A, it is now well settled, apply only to cases of total partition of the family. There is no provision in the Act as to the enquiries to be made and the procedure to be adopted in the case of partial partition of a Hindu undivided family. We think that some provision on the subject is desirable. We have therefore amplified the section so as to cover cases of partial partition of Hindu undivided families.²

(vi) It has been made clear³ that the rate at which a State Government is to pay the tax on its tax free securities should be laid down by the Finance Act.

Chapter XVI
Special provisions
applicable to
firms

65 All the provisions of the Act applicable to firms have been gathered together in this Chapter. This will enable the partners and others to ascertain the law from one Chapter instead of searching for provisions dispersed all over the Act.

The principal changes made in this Chapter are given below.

(1) The provisions contained at present in the Rules regarding the registration and cancellation of registration of firms, have been incorporated in the Act.

(2) The provision for fresh application for registration every year has been deleted, as it entails hardship. A declaration that there has been no change in the constitution of the firm will suffice.⁴

(3) There was some difficulty in determining when there is a change in the constitution of a firm and when there is a succession. The specific circumstances which result in a change in the constitution of a firm have now been defined.⁵

(4) It has been noticed that Income-tax Officers reject the applications for registration on the ground of technical defects in the instrument of partnership. For example, where the partners of firm A and firm B form a bigger firm—

¹ Clause 178, App. I

² See clause 181, App. I

³ Vide clause 188, App. I

⁴ See clause 191(7), App. I

⁵ See clause 194, App. I

firm C, the registration of firm C is refused if the instrument of partnership of firm C does not *itself* specify the individual shares of the partners, but merely mentions the constituent firms as the partners. In such cases, the shares of the partners in firm C, we feel, should be ascertained with the help of the instruments of partnership relating to firms A and B. We have, therefore, proposed a change in section 26A, so that in considering the application for registration, the Income-tax Officer will be required to have regard to the instruments of partnership of the connected firms also.

(5) A clause enumerating all other provisions relevant to firms has been added.

The provision for registration of firms (section 26A and the rules made thereunder) has worked great hardship in practice. Practical experience of the working of the Act shows that the department is astute to find technical defects on the strength of which registration may be refused. Such refusal can obviously work enormous hardship, since the result of such refusal would be that tax would be attracted at a much higher rate in most cases than if the income were apportioned among the various partners and taxed separately in their hands. The reports of income-tax cases afford many illustrations of how even genuine firms have been refused registration merely because of some technical defect. We have tried to alleviate the hardship by liberalising the provisions to some extent, as indicated above. But we feel that if the provision for registration is at all to be retained, there should be a complete change in the approach of the income-tax authorities, and the provision should not be administered in a hyper-technical spirit, as is done at present. If the law is not administered in a liberal and reasonable spirit, the old adage "the letter killeth" would fully apply.

We would also like to draw the attention of the Government to another provision relating to firms which we feel is totally unjust. We are referring to section 23(5)(a)(i) of the Act, which provides for the levy of tax on registered firms in addition to the tax levied on the individual partners of registered firms. This is the least defensible provision of the present income-tax law. Prior to the amendments made by the Finance Act, 1956, a registered firm did not pay any tax itself, but each partner's share of the firm's profits was added to his other income and the tax payable by each partner on the basis of his total income (including his share of the firm's profits) was determined and the levy was made on the partners individually. Thus, there was no double taxation. But after the amendment made by the Finance Act, 1956, (see paragraph D of the First Schedule to that Act for the rates of tax), income-tax is now assessable on a registered firm, and the partners of the registered firm are again liable to be charged in their individual assessments to both income-tax and super-tax in respect of their

Double taxation of registered firms.

shares of the firm's profits. There is thus double taxation in the case of a registered firm so far as income tax is concerned (though not as regards super tax) and only partial relief against such double taxation is afforded by section 14(2)(aa). This provision for double taxation is without precedent so far as we have been able to gather in the history of income-tax legislation either in this country or in the other countries whose laws we have examined. To assess a firm in respect of its profits and to assess the individual partners again in respect of their shares of the firm's profits is virtually double assessment on the same individuals in respect of the same income. This type of legislation cannot be supported on any considerations of justice or fairness or any sound principle of taxation. It would work as a dangerous precedent. We appreciate that it is a matter of legislative policy how high the incidence of taxation should be but there is no reason why resort should be had to pure and simple double taxation on the same individuals in respect of the same income under the same Act as a mode of raising the revenue. As alteration in the tax structure is not within the scope of our proposals we have not made any change on this point in the draft clause in Appendix I. But we strongly recommend that this provision [the system of taxing a registered firm under section 23(5)(a)(i) read with the annual Finance Act] should be abolished.

Chapter XVII
Special provisions
applicable to
companies

66 We felt that it would be useful to enumerate in one place all the provisions of the Act which pertain to companies. The provisions themselves have been put in the relevant places e.g. residence has been put in the Chapter on Basis of charge the additional super tax payable by a company has been put in the Chapter on super tax and so on. But all the provisions of the Act which pertain to the assessment of companies have been listed here for easy reference.

Chapter XVIII
Collection and
recovery of
tax.

67 The provisions pertaining to collection and recovery of tax are contained at present in Chapters IV and VI. The provisions pertaining to deduction of tax and advance payment of tax are really provisions pertaining to recovery of tax. Therefore the provisions pertaining to deduction advance payment of tax and recovery of tax have all been brought together in this Chapter.

68 The principal changes made in this Chapter are as under —

(i) Some doubt was felt as to whether the provisions pertaining to deduction at source or advance payment of tax were valid in the absence of a charge of tax. We have made it clear by adding suitable provisions that there is a charge for deduction of tax and advance payment of tax etc.

¹ *I* *ide* clause 199(1) read with clause 3(2) App I

We have also made it clear¹ that advance tax on dividends is confined to advance *super-tax*. So far as *income-tax* is concerned, the question of advance payment does not arise in view of the provisions of section 16(2) read with section 18(5) and 49B.

We have also made changes² in the rate of interest in connection with advance tax and the date from which the interest is to run, so as to secure uniformity. The notes on the relevant clauses indicates in detail the changes made in this respect.

(ii) In regard to the provisions for recovery of tax, the principal change made is that the provisions pertaining to the procedure for recovery of tax by the Collector to whom a certificate is issued have been incorporated in a separate Schedule to the Act, which will constitute a self-contained Code. In drafting this Schedule, we have examined the provisions of the various Revenue Recovery Acts of the various States as also of the various Municipal Acts. The procedure to be followed by the Collector is not very clear and varies from State to State. This variance in procedure has been commented upon by the Supreme Court.³ Whatever the position may be in regard to recovery of tax levied by States, we consider that there should be a uniform procedure in regard to recovery of Central taxes. (See detailed discussions below under "Revenue Laws".)

(iii) Provision⁴ has been made for an Income-tax Officer to send a certificate to the Collector of any district in India in which the assessee possesses property or resides. At present, the Income-tax Officer can send a certificate only to the Collector of the district in which he functions, and where the certificate is to be sent to another Collector, the Collector to whom the certificate has been sent has to forward it to the other Collector. This procedure results in delaying proceedings for recovery.

(iv) It is the departmental practice and it is also convenient from the point of view of assessee—that the power to grant payments in instalments should rest with the Income-tax Officer, and that the power should continue even after the issue of a certificate to the Collector. We have inserted the necessary provisions on the subject⁵.

(v) The scope of sections 46 (3) and 46(4), under which, in areas notified by the Commissioner, arrears can be realised in the manner provided by the Municipal Act of the State, has been narrowed down. Of the various remedies provided by Municipal Acts, the power of distraint and sale is the only one that is really effective, and that has

¹ *Vide* clause 215(3), App. I.

² See App. I, clauses 221, Proviso and 224 for rate, and 223(1) for date.

³ *Purshottam Govindji Halai vs. Additional Collector of Bombay*—(1955) 28 I. T. R. 891.

⁴ See clause 232, App. I.

⁵ See clauses 229(2) and 234(1), App. I.

been specifically dealt with in the draft' It will be available to any Income-tax Officer authorised for the purpose by the Commissioner The procedure to be adopted by the Income-tax Officer in the case of distraint of property has been dealt with in a separate Schedule

Several Municipal Acts contain provisions for an application being made to a Magistrate having jurisdiction over the area and provide that the Magistrate will thereupon collect the tax in the manner provided for the recovery of fines or prosecute the defaulter for non payment of the tax These powers have in fact never been exercised, and we think it unnecessary to retain them'

(vi) For expediting recovery, we think that it would be desirable to have a provision enabling the Income-tax Officer to apply directly to a court (in whose custody there is money belonging to the assessee) for payment of the money in its possession This will save time and do away with the necessity of proceeding through the Collector as at present We have accordingly inserted a provision' for the purpose

(vii) One more mode of recovery is recovery by a suit This is implied under the present law but we felt that it might be useful to make a specific mention of it in the Act and have mentioned it accordingly'

(viii) At present one of the modes of recovery is the imposition of a penalty under section 46 (1) the aggregate penalty imposed not exceeding the tax payable The object of this provision is to prevent the assessee from utilising money which belongs to Government without compensating the Government by way of interest for the delayed payment Under the present procedure however, it may happen that while the penalty is imposed in one case where payment is delayed it may not be imposed in another case where also payment is delayed It may also happen that in the case of a particular assessee the penalty imposed under section 46 (1) is remitted on appeal This we consider would lead to discrimination between assesseees who are similarly situated The provision in the Australian Act in this behalf has appealed to us as being more equitable We have therefore provided' for interest at 10 per cent being payable by every assessee who is in default in respect of the amount outstanding, from the date on which the amount falls due (We think that the rate of interest should be sufficiently high so as to induce assesseees to make prompt payment of arrears)

¹ See clause 235(5) App I

² Detailed discussion below under the head 'Municipal laws may be seen

³ Vide clause 235(1) App I

⁴ See clause 243 (b) App I

⁵ See clause 230 (1) App I

We have also provided¹ for the interest being waived in cases where the tax is paid within three months of the default.

The corresponding provisions in the Canadian, U.K. and Australian Acts may be compared².

(ix) The position regarding the action to be taken for the correction or cancellation of a recovery certificate issued by the Income-tax Officer to the Collector is very uncertain at present. If after the issue of a certificate some mistake is detected or the amount is reduced or increased or the Income-tax Officer desires to withdraw the certificate for some reason, the action to be taken is not easily ascertainable from the Act. We have, therefore, added a provision³ to make the position clear. Under the provision proposed by us, the assessee cannot challenge the correctness of a certificate before the Collector; but he will have the right to move the Income-tax Officer (who issued the certificate) in appropriate cases. We have also provided for an appeal against an order of an Income-tax Officer rejecting an application of the assessee raising objection to the certificate.

(x) Regarding section 46 (5), which confers on the Income-tax Officer a power to require the employer of an assessee to withhold the assessee's salary and remit the amount to the Income-tax Officer towards payment of the assessee's arrears, we feel that the power should not be available in respect of that portion of the salary which exempt from attachment under the Civil Procedure Code. We have changed the provision accordingly⁴.

69. As regards recovery under revenue Laws, a detailed discussion of the position appears to be desirable. Sub-section (2) of section 46 contains the procedure to be followed by the Collector after receipt of the certificate from the Income-tax Officer. The procedure is the same as that laid down for the recovery of arrears of land revenue in his State. Revenue Laws.

The proviso to sub-section (2) of section 46 confers upon the Collector all the powers which a court under the Code of Civil Procedure, 1908, exercises for the purpose of recovery of an amount due under a decree. This, of course, is without prejudice to any other powers of the Collector in that behalf.

[The provisions of sections 46 (3) and 46 (4) will be discussed later.]

¹ See clause 230 (2), App. I.

² Cf. section 54, Canadian I. T. Act, 1948 (where the rate is 6 p. c.) and section 495, U.K.I.T. Act, 1952 (the rate being 3 p. c.), and Section 270, Australan Income-tax etc. Act, 1936-1953 (where the rate is 10 p. c.).

³ Clause 233, App. I.

⁴ See clause 235 (2), App. I.

70 The powers of the Collector are to be gathered from the laws relating to the realisation of land revenue obtaining in the appropriate State, supplemented by the powers exercisable under the Code of Civil Procedure. An examination of the revenue laws obtaining in the States now forming part of India shows that under these laws the following processes for realization of arrears of revenue are available

- (a) distraint and sale of moveable property of the defaulter,
- (b) attachment and sale of immoveable property of the defaulter,
- (c) attachment of property belonging to the defaulter and management thereof,
- (d) arrest and detention of the defaulter in civil prison

All these modes of recovery do not obtain in all the States. Further, in the same State, there are variations depending upon the place of accrual of the revenue arrears according as the arrears arose in the capital city or outside

71 Section 51 of the Code of Civil Procedure 1908 lays down the modes of execution and it contains as many as five methods of execution of a decree of Civil Court. Sub-clauses (b) (c) and (d) of that section are alone relevant for the purpose of income-tax law, and they are —

- (i) attachment and sale or sale without attachment of any property (the word property is here used so as to include moveable and immoveable property),
- (ii) arrest and detention in prison, and
- (iii) appointment of a receiver

72 It will be seen by a comparison of the modes available under the revenue laws with those under the Civil Procedure Code that the only additional power which the Code of Civil Procedure confers is the power to appoint a receiver in execution of a decree. The Code of Civil Procedure lays down in Order XXI the procedure to be followed in respect of these modes. Revenue laws of the States also lay down the detailed procedure to be followed by the Collector for realising arrears of land revenue

73 The revenue laws relevant are —

[Owing to the distribution of States before and after the S R C Act it has not been possible to attempt a classification of these Acts on the basis of the States as they now exist. Some of these Acts apply in one or more States. The list is also not exhaustive.]

- 1 Madras City Land Revenue Act (XII of 1851), read with the Madras City Land Revenue (Amendment) Act (VI of 1867)

2. Madras Revenue Recovery Act (II of 1864).
3. Bombay City Land Revenue Act (II of 1876).
4. Bombay Land Revenue Code (V of 1879).
5. Bengal Land—Revenue Sales Act (XI of 1859) read with the Bengal Land revenue Sales Act (VII of 1868).
6. Bengal Public Demands Recovery Act (III of 1913).
7. Calcutta Land revenue Act (XXIII of 1850).
8. Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (I of 1951).
9. Assam Land Revenue Regulation, 1886 (I of 1886).
10. Bihar and Orissa Public Demands Recovery Act (IV of 1914).
11. Punjab Land Revenue Act (XVII of 1887).
12. Madhya Pradesh Land Revenue Code, 1954 (II of 1955).
13. Hyderabad Land Revenue Act (VIII of 1317 Fasli).
14. Mysore Land Revenue Code, 1888 (IV of 1888).
15. Madhya Bharat Revenue Administration and Ryotwari Land Revenue and Tenancy Act (66 of 1950).
16. Rajasthan Public Demands Recovery Act (V of 1952).
17. Rajasthan Land Revenue Act (XV of 1956).
18. Travancore-Cochin Revenue Recovery Act (VII of 1951).
19. Coorg Land and Revenue Regulation, 1899 (I of 1899).
20. Vindhya Pradesh Land Revenue and Tenancy Act 1953 (III of 1955).

74. The following analysis gives a summary of the remedies available for realisation of arrears of revenue in each of the States :

I. Madras Acts.

1. Madras Revenue Recovery Act (II of 1864).

(i) Distress and sale of moveable property.

(ii) Attachment and sale of immoveable property or management of it.

(iii) Arrest and detention.

- 2 Madras City Land Revenue Act (XII of 1851) read with Madras City Land Revenue (Amendment) Act (VI of 1867)

- (i) Distress and sale of moveable property
- (ii) Attachment and sale of immoveable property

II Bombay Acts

- 1 Bombay Land Revenue Code (V of 1879)

- (i) Attachment and management of land
- (ii) Forfeiture of the occupancy or alienated holding
- (iii) Distress and sale of moveable property
- (iv) Sale of immoveable property
- (v) Arrest and imprisonment of the defaulter

- 2 Bombay City Land Revenue Act (II of 1876)

- (i) Distress and sale of moveable property
- (ii) Attachment and sale of immoveable property
- (iii) Arrest and detention

III West Bengal Acts

- 1 Bengal Public Demands Recovery Act (III of 1913)

- (i) Attachment and sale of moveable property
- (ii) Attachment and sale or sale only of immoveable property
- (iii) Attachment of a decree
- (v) Arrest and detention

IV Bihar Acts

- 1 Bihar and Orissa Public Demands Recovery Act (IV of 1914)

- (i) Attachment and sale of moveable property
- (ii) Attachment and sale or sale alone of immoveable property
- (iii) Arrest and Detention

V Orissa Acts

- 1 Bihar and Orissa Public Demands Recovery Act (IV of 1914)

As in Bihar

2. Madras Revenue Recovery Act (II of 1864) As in Madras

3. Central Provinces and Revenue Act (II of 1917).

- (i) Arrest and detention.
- (ii) Attachment and sale of moveable property.
- (iii) Attachment of estate, mahal or land and taking it under direct management.
- (iv) Transferring the share of land to another co-sharer.
- (v) Annuling the settlement of the estate, mahal or land.
- (vi) Selling estate, mahal or land.
- (vii) Attaching and selling other immoveable property.

VI. Madhya Pradesh Acts.

1. Madhya Pradesh Land Revenue Code, 1954 (II of 1955).

- (i) Attachment and sale of moveable property.
- (ii) Attachment and sale of holding.
- (iii) Attachment and sale of other immoveable property.

VII. Punjab Acts.

1. Punjab Land Revenue Act (XVII of 1887).

- (i) Arrest and imprisonment.
- (ii) Distress and sale of moveable property.
- (iii) Transferring the holding.
- (iv) Attachment of the estate or holding.
- (v) Annulment of the assessment.
- (vi) Sale of the estate or holding.
- (vii) Proceeding against other immoveable property.

VIII. Uttar Pradesh Acts.

1. Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (I of 1951) Sections 58 to 188 (chapters V to VIII) of the United Provinces Land Revenue Act, 1901 have been repealed by this Act.

- (i) Arrest and detention.
- (ii) Attachment and sale of moveable property.
- (iii) Attachment and sale of the holding.
- (iv) Attachment and sale of other immoveable property.

IX. Assam Acts

1 Assam Land Revenue Regulation (I of 1886)

- (i) Sale of moveables
- (ii) Attachment of estate and management thereof
- (iii) Sale of estate
- (iv) Annulment of settlement
- (v) Attachment and sale of other immoveable property

X Mysore Acts

1 Mysore Land Revenue Code 1888 (IV of 1888)

- (i) Forfeiture of the occupancy or alienated holding
- (ii) Distraint and sale of moveable property
- (iii) Sale of immoveable property
- (iv) Arrest and imprisonment
- (v) Attachment of holding (consisting of entire villages or shares of villages) and, management thereof

XI Madhya Bharat Acts.

1 Madhya Bharat Revenue Administration and Ryotwari Land Revenue and Tenancy Act (66 of 1950)

- (i) Attachment and sale of moveable property
- (ii) Attachment and sale of immoveable property (other than the land in respect of which the arrears have accrued)
- (iii) Attachment and sale of the land
- (iv) Taking the land under direct management or letting it in farm

XII Travancore Cochin Acts

1 Travancore-Cochin Revenue Recovery Act (VII of 1951)

- (i) Distraint and sale of moveable property
- (ii) Attachment and sale of immoveable property

XIII Rajasthan Acts

1 Rajasthan Land Revenue Act (15 of 1956)

- (i) Attachment and sale of moveable property
- (ii) Attachment of the land
- (iii) Transfer of such attached land to a co-sharer

(iv) Sale of such attached land.

(v) Sale of other immoveable property.

2. Rajasthan Public Demands Recovery, Act (V of 1952).

The same modes as in the Rajasthan Land Revenue Act (15 of 1956).

XIV. Hyderabad Acts.

1. Hyderabad Land Revenue Act No. VIII of 1317 F.

(i) Distraint and sale of moveable property.

(ii) Distraint and sale of immoveable property.

(iii) Arrest and imprisonment.

(iv) Forfeiture of the occupancy.

(v) Temporary attachment of village or share of a village.

XV. Vindhya Pradesh Acts.

1. Vindhya Pradesh Land Revenue and Tenancy Act, 1953 (III of 1955).

(i) Attachment and sale of moveable property.

(ii) Attachment and sale of the land in arrears.

(iii) Attachment and sale of other land.

(iv) Attachment and sale of other immoveable property.

XVI. Coorg Acts.

1. Coorg Land and Revenue Regulation, 1899 (I of 1899).

(i) Arrest and imprisonment.

(ii) Distraint and sale of moveable property.

(iii) Attachment and sale of immoveable property.

75. The following revenue laws do not provide for arrest and detention of the defaulter in civil prison when the amount of revenue due is not paid—

1. Calcutta Land Revenue Act (XXIII of 1850).

2. Madras City Land Revenue Act (XII of 1851) read with Madras City Land Revenue (Amendment) Act (VI of 1867).

3. Assam Land Revenue Regulation, 1886 (I of 1886).

4. Madhya Pradesh Land Revenue Code, 1954 (II of 1955).

5. Madhya Bharat Revenue Administration and Ryotwari Land Revenue and Tenancy Act (66 of 1950).

- 6 Rajasthan Land Revenue Act (15 of 1956)
- 7 Travancore Cochin Revenue Recovery Act (VII of 1951)
- 8 Vindhya Pradesh Land Revenue and Tenancy Act, 1953, (III of 1955)

municipal
laws

76 For the purpose of sub sections (3) and (4) of section 46 it is also necessary to have an analysis of the laws obtaining in the various States for recovery of arrears of municipal tax or local rates. An analysis of these Acts is also given below —

- 1 Bombay District Municipal Act (III of 1901)
- 2 Bombay Municipal Corporation Act (III of 1888)
- 3 Bombay Provincial Municipal Corporations Act (LIX of 1949)
- 4 Bombay Municipal Boroughs Act (XVIII of 1925)
- 5 Madras City Municipal Act (IV of 1919)
- 6 Madras District Municipalities Act (V of 1920)
- 7 Bengal Municipal Act (XV of 1932)
- 8 Calcutta Municipal Act (XXXIII of 1951)
- 9 Punjab Municipal Act (III of 1911)
- 10 Orissa Municipal Act (XXIII of 1950)
- 11 Bihar and Orissa Municipal Act (VII of 1922)
- 12 Assam Municipal Act (I of 1923)
- 13 United Provinces Municipalities Act (II of 1916)
- 14 Central Provinces and Berar Municipalities Act (II of 1922)
- 15 City of Nagpur Corporation Act 1948 (II of 1950)
- 16 City of Jabbalpore Corporation Act 1948 (III of 1950)
- 17 Hyderabad Municipal Corporations Act (XXXVI of 1950)
- 18 Hyderabad Municipal and Town Committees Act (XXVII of 1951)
- 19 Bangalore City Municipal Corporation Act (LXIX of 1949)
- 20 Mysore City Municipalities Act (VII of 1933)
- 21 Mysore Town Municipalities Act (XXII of 1951)
- 22 Rajasthan Town Municipalities Act (XXIII of 1951)
- 23 Rewa State Municipalities Act 1946
- 24 United Provinces District Boards Act (X of 1922)

25. Bombay Local Boards Act (VI of 1923).
26. Madras District Boards Act (XIV of 1920).
27. Rajasthan District Boards Act (II of 1954).
28. Mysore Village Panchayats and District Boards Act (IV of 1952).
29. Punjab District Boards Act (XX of 1883).

77. The various remedies available under Municipal Acts are as follows :

Remedies
for recovery
of Muni-
cipal dues.

I. West Bengal.

1. The Bengal Municipal Act (XV of 1932).
 - (i) Distress and sale of moveable property.
 - (ii) If unsuccessful in collecting the amount of arrear by the employment of the first mode, recovery may be made by certificate under the Bengal Public Demands Recovery Act (III of 1913).
 - (iii) Instead of or in the case of failure to realise the amount by adopting the first two modes, the arrears may be recovered by bringing a suit in a court of competent jurisdiction against the person liable for the arrears.
2. The Calcutta Municipal Act (XXXIII of 1951).
 - (i) Distress and sale of moveable property.
 - (ii) If unsuccessful by adopting the first mode, the arrears may be recovered by a certificate under the Bengal Public Demands Recovery Act (III of 1913).
 - (iii) Instead of or in the case of failure to realise the amount by adopting the first two modes, the arrears may be recovered by bringing a suit in a court of competent jurisdiction.
 - (iv) If any tax (other than the consolidated rate) is due the Commissioner may either prosecute the defaulter or proceed to realise the amount by distraint and sale of the moveables.

II. Madras.

1. The Madras City Municipal Act (IV of 1919).
 - (i) Distress and sale of the moveable property.
 - (ii) If distraint or sufficient distraint is impracticable the defaulter is prosecuted before a Magistrate.
 - (iii) If the defaulter has left India or cannot be found the amount may be recovered as if it were an arrear of land revenue.

- 2 The Madras District Municipalities Act (V of 1920)
 - (i) Distress and sale of moveable property
 - (ii) If distraint or sufficient distraint is impracticable the defaulter may be prosecuted before a Magistrate
 - (iii) If the defaulter has left India or cannot be found the amount may be recovered as if it were an arrear of land revenue
- 3 The Madras District Boards Act (XIV of 1920).
 - (i) Distraint and sale of moveable property
 - (ii) If distraint or sufficient distraint is impracticable the defaulter may be prosecuted before a Magistrate

III Bombay

- 1 Bombay District Municipal Act (III of 1901)
 - (i) Distress and sale of moveable property
 - (ii) Attachment and sale of immoveable property
 - (iii) If the above mentioned powers have been suspended by the State Government, sums due may be recovered on application to a Magistrate (by distress and sale of moveable property within the limits of the jurisdiction of such Magistrate)
 - (iv) If the person liable for payment of any sum (other than octroi or toll) is residing outside the State or has not sufficient property in the State then the amount may be recovered as if it were an arrear of land revenue under the provisions of the Revenue Recovery Act, 1890
- 2 The Bombay Municipal Corporation Act (III of 1888)
 - (i) Distress and sale of moveable property
 - (ii) Attachment and sale of immoveable property
 - (iii) Suit in a court of competent jurisdiction
- 3 The Bombay Provincial Municipal Corporations Act (LIX of 1949)
 - (i) Distress and sale of moveable property
 - (ii) Attachment and sale of immoveable property
 - (iii) Attachment of rent
 - (iv) Suit in a court of competent jurisdiction

4. The Bombay Municipal Boroughs Act (XVIII of 1925).

- (i) Distress and sale of moveable property.
- (ii) Attachment and sale of immoveable property.
- (iii) Recovery as arrears of land revenue (if the person liable is residing outside the State and has no property in the State).

5. Bombay Local Boards Act (VI of 1923).

- (i) Distress and sale of moveable property.
- (ii) Application to a Magistrate for recovery (distress and sale of moveable property).

IV. Bihar.

1. The Bihar and Orissa Municipal Act (VII of 1922).

- (i) Distress and sale of the moveable property.
- (ii) Recovery as a public demand payable to the Chairman under the Bihar and Orissa Public Demands Recovery Act (IV of 1914).
- (iii) Suit.

V. Orissa.

1. The Orissa Municipal Act (XXIII of 1950).

- (i) Distress and sale of the moveable property.
- (ii) As an arrear of land revenue.
- (iii) Suit.

VI. Punjab.

1. The Punjab Municipal Act (III of 1911).

- (i) Property tax may be recovered as an arrear of land revenue (without the power of arrest of the defaulter).
- (ii) Application to the Magistrate (by distress and sale of moveable property).

2. The Punjab District Boards Act (XX of 1883).

- (i) Application to a Magistrate (by distress and sale of moveable property).
- (ii) As arrears of land revenue.

VII. Uttar Pradesh.

1. United Provinces Municipalities Act (II of 1916).

- (i) Distress and sale of moveable property.
- (ii) Bringing a suit in a court of competent jurisdiction.

2. United Provinces District Boards Act (X of 1922).

- (i) Distress and sale of moveable property.
- (ii) Bringing a suit in a Court of a competent jurisdiction.

VIII. Assam.

1. Assam Municipal Act (I of 1923).

- (i) Attachment and sale of moveable property.

- (ii) Bringing a suit in a court of competent jurisdiction

IX Madhya Pradesh

- 1 The Central Provinces and Berar Municipalities Act (II of 1922)
 - (i) Recovery on application to a Magistrate having jurisdiction (by distress and sale of moveable property)
 - (ii) Application to the Deputy Commissioner to recover arrears (of property tax only) as if they were an arrear of land revenue

X Hyderabad.

- 1 The Hyderabad Municipal Corporations Act (XXXVI of 1950)
 - (i) Distraint and sale of moveable property
 - (ii) Attachment and sale of immoveable property
 - (iii) Attachment of rent (for property tax only)
 - (iv) Suit
- 2 Hyderabad Municipal and Town Committees Act (XXVII of 1951)
 - (i) Distress and sale of moveable property

XI Mysore

- 1 Mysore Town Municipalities Act (XXII of 1951)
 - (i) Distress and sale of moveable property
 - (ii) Prosecution before a Magistrate
 - (iii) Application to a Magistrate (Distress and sale of moveable property)
- 2 Mysore Village Panchayats and District Boards Act (IV of 1952)
 - (i) Distraint and sale of moveable property
 - (ii) Suit
- 3 Mysore City Municipalities Act (VII of 1933)
 - (i) Distress and sale of moveable property
- 4 City of Bangalore Municipal Corporation Act (LXIX of 1949)
 - (i) Distress and sale of the moveable property
 - (ii) Prosecution before a Magistrate
 - (iii) Recovery as an arrear of land revenue (if the person liable has left Mysore and cannot be found)

XII. Rajasthan.

1. Rajasthan Town Municipalities Act (XXIII of 1951).

- (i) Distress and sale of moveable property.
- (ii) Application to a Magistrate (distress and sale of moveable property).

2. Rajasthan District Boards Act (II of 1954).

- (i) Distress and sale of moveable property.
- (ii) Bringing a suit.

XIII. Vindhya Pradesh.

1. Rewa State Municipalities Act, 1946.

- (i) Distress and sale of moveable property.
- (ii) Bringing a suit.

78. From the foregoing analysis it is clear that the remedies available in the different States under the revenue laws are not uniform and the procedure also varies in some details.

79. In *Purshottam Govindji's case*¹ the Supreme Court held that section 46(2) is valid and does not offend articles 21, 22 and 14 of the Constitution. Chandrasekhara Iyer J., though he agreed with the majority view, observed that "for the enforcement of the levy of a Central Tax like the income-tax there should be uniformity of procedure and identity of consequences from non-payment". The learned Chief Justice in his judgment compared the provisions of different laws adopted by the different States for the recovery of land revenue and observed that even in "the same State there were two procedures to which defaulting assesseees could be subjected according as they were in or outside the city of Bombay". The learned Chief Justice also pointed out the variation in the terms of imprisonment provided in the State Acts and that in some State (e.g. Assam) there was no provision for imprisonment. Though section 46(2) was upheld as valid, a perusal of the judgment convinces one that uniformity is desirable and that the observations of Chandrasekhara Iyer J. are justified.

80. We have therefore thought it incumbent upon us to codify the law in this respect and include it in a separate Schedule. The judgment of the Supreme Court also gives an authoritative interpretation of the proviso to section 46(2). The meaning of the proviso may be stated, in the words of the Supreme Court, as follows:—

Action proposed (Revenue laws).

"On a proper reading, that sub-section does not prescribe two alternative modes of procedure at all. All that the sub-section directs the Collector to do is to proceed to recover the amount as if it were an arrear of land revenue, that is to say, he is to adopt the procedure prescribed by the appropriate law of his State for the recovery of land revenue,

¹ (1955) 28 I. T. R. 891.

and that in this proceeding he is, under the proviso to have all the powers a Civil Court has under the Code. The sub-section does not prescribe two separate procedures. The statement to the contrary in the judgment of the Bombay High Court in *Sai Ali Ahmed v Collector of Bombay*¹, does not appear to us to be correct. In our opinion the proviso does not indicate a different and alternative mode of recovery of the certified amount of the tax but only confers additional powers on the Collector for the better and more effective application of the only mode of recovery authorised by the body of sub section (2) of section 46²

81 A power is distinct from the procedure for the exercise of the power. The procedure laid down by the Code for the exercise of the powers enumerated in section 51 is contained in Order 21 of the Code. The revenue laws of each state lay down the powers as well as the procedure. As held by the Supreme Court the Proviso confers only additional powers on the Collector for the better and more effective application of the only mode of recovery authorised by the body of sub section (2) of section 46. The only additional power contained in section 51, CPC is the power to appoint a receiver in execution of a decree. In some of the Revenue Acts, the Collector possesses the power to attach an estate or a village or a part of it and manage such attached property through his agent. Section 51 of the Civil Procedure Code is not restricted in its scope and a receiver may be appointed in any case even without attachment of the property. This additional power is also now included by us in the proposed draft.

Act on Proposed (Municipal laws)

82 The process enforceable for the recovery of an arrear of municipal tax and local rate, referred to in sub-sections (3) and (4) of section 46 has nothing to do with the Collector. Distraint and sale of moveable property (and in some states attachment and sale of immoveable property also) or prosecution before a magistrate treating the default in payment of the tax or the rate as an offence and imposing a fine and recovery of the arrear and the fine under the provisions of the Criminal Procedure Code (S 386) or recovery of the arrear as if it were a fine imposed by a criminal court, are the modes laid down. The Acts which contain provisions for prosecution before a magistrate or recovery of the arrears by application to the Magistrate for distraint and sale of moveable property are detailed below —

- 1 Rajasthan Town Municipalities Act (XXIII of 1951) S 97 (Only if there is suspension of the other powers by the Government)

¹ I L R 1950 Bom. 150 155

2. Calcutta Municipal Act (33 of 1951).
3. Punjab Municipal Act (III of 1911), (S. 81 application to Magistrate).
4. Madras City Municipal Act (IV of 1919) Rules 21(2) and 29-B of Schedule IV to the Act.
5. Madras District Municipalities Act (V of 1920), Rules 21(2) and 36 of Schedule IV.
6. City of Bangalore Municipal Corporation Act (LXIX of 1949) [Rules 30(2) and 39 of Schedule III].
7. Mysore Town Municipalities Act (XXII of 1951) Section 96.
8. Bombay District Municipal Act (III of 1901) S. 88 (Only if there is suspension of the other powers of recovery by the Government).
9. Bombay Local Boards Act (VI of 1923) S. 115 (Only if the other powers of recovery are suspended by the State Government).
10. Madras District Boards Act (XIV of 1920), Rules 33(2) and 39 of Schedule IV.
11. Punjab District Boards Act (XX of 1883) S. 58-B [Only in the case of other sums (other than local rates and taxes) due].
12. Central Provinces and Berar Municipalities Act (II of 1922). Section 77.

83. All the processes are enforceable by the Income-tax Officer if the requirements of sub-sections (3) and (4) of section 46 are satisfied.

84. In the draft we have restricted the power of the Income-tax Officer to the mode of recovery by distraint and sale of moveable property. Even this power is, we are told, seldom invoked except in a few places. We have omitted the power to approach the magistrate either to recover the arrears as a fine or to prosecute the defaulter, as such a power is never in practice exercised. The procedure is circumlocutory and is not suited to modern conditions of society. The existing power of the Income-tax Officer to make a garnishee order is retained.

85. It may be of interest in this connection to mention Remedies in that in other countries the remedies for recovery of In- other Coun- come-tax are very simple as could be seen from the follow- tries. analysis :—

United Kingdom—U. K. Income-tax Act 1952.

- (a) Distraint by Collector (S. 76).
- (b) Recovery of small amounts of tax in court of Summary Jurisdiction as if it were a civil debt (Sec. 78).

(c) Suit in the High Court (Sec 79)

United States

(Internal Revenue Code 1954)

Chapter 64—Collection

Sec 6331—Levy and distraint and sale of property
whether real or personal tangible or in
tangible

Commonwealth of Australia.

Income tax and Social Services Contribution Assessment
Act 1936—53

(a) Section S 209—Suit

(b) Garnishee Order by the Commissioner—S 218

Canada

Income tax Act 1948 (Secs 118 to 121)

(a) Certificate by the Minister is registered in the Ex
chequer Court and such registration has the force
of decree and is executable by the Court (S 119)

(b) Garnishment (Sec 120)

(c) Seizure of Chattels (Sec 121)

South Africa

The Income tax Act 1941 (Sec 85)

(a) Statement by the Commissioner of the tax duly
filed with a clerk or registrar of a court is treated
as a judgment and enforced by the Court as such

(b) Proceedings by the Commissioner for the seques-
tration of the estate of the tax payer

(c) Enforcement by a Magistrate

Ceylon

The Income tax Ordinance Sec 79

(a) Commissioner issues a certificate and is enforced
by seizure and sale of moveable property

(b) Certificate to the District Court who would en-
force it by way of execution against the moveable
and immoveable property of the defaulter

(c) Proceedings for recovery before a magistrate

(d) Garnishee Order

Chapter XIX
Tax deemed
to have been
paid on div-
dends

86 A portion of the tax paid by the company is deemed to have been paid by the shareholder under sections 18(5) and 49B. The tax paid by the company in respect of dividends is thus given a special treatment in the Act in

the assessment of the shareholder. We felt that it would be useful and convenient to bring together the various provisions of the Act pertaining to such treatment. The provisions of the Act pertaining to the tax deemed to have been paid in dividends have, therefore, been gathered together in this chapter.

87. The provisions of the present Act pertaining to refunds, have been grouped together in this Chapter. Chapter XX
Refunds.

To avoid delay in refunds, we have inserted a provision [on the analogy of section 57(3) of the Canadian Act] that where the refund order is made more than three months after the application for refund, the Central Government shall pay interest at the rate of 2%. A similar recommendation was made by the Income-tax Investigation Commission¹. We have also made it clear² that where refund is due as a result of an appellate order or as a result of decision by the High Court, no separate application is necessary.

88. All the provisions pertaining to appeals have been brought together in this Chapter. Chapter XXI
Appeals and
Revisions.

89. On principle, it may appear objectionable that an agency which is under the direct control of the Central Board of Revenue should be vested with jurisdiction to hear appeals from the orders of the Income-tax Officer. Justice should not only be done, but should appear to be done and should inspire confidence in the persons concerned. It is an elementary principle of the law that a person should not be a judge in his own cause. The Appellate Assistant Commissioner, being under the direct control of the Central Board of Revenue, may not be considered as a satisfactory authority to hear and dispose of appeals against the orders of the Income-tax Officer. One suggestion that was made long ago was that the Appellate Assistant Commissioner should be placed under the control of the Income-tax Appellate Tribunal, so as to make him independent of the authority and influence of the Central Board of Revenue. This question was examined by the Income-tax Investigation Commission, and that Commission observed³ that there was no reason to think that by reason of the subordination of the Appellate Assistant Commissioners to the Central Board of Revenue, they were influenced by the Central Board of Revenue in their decisions or that they were in any manner partial in the discharge of their duties, or that their judgments were affected by any considerations irrelevant to the decisions of the appeal. No doubt, in spite of this conclusion the Commission did make a recommendation that there should

¹Vide clause 252, App. I.

²Para. 279, pages 125, 126, I. T. I. C. Report, 1948.

³Vide clause 250, App. I.

⁴Paragraph 319, pages 142, 143, I. T. I. C. Report; 1948.

be an alteration in the then existing system and that Appellate Assistant Commissioners should be removed from the control of the Central Board of Revenue and placed under the Appellate Tribunal. But this recommendation was not accepted by the Select Committee constituted in connection with the Income-tax Amendment Bill of 1952, which examined the question in the light of the recommendations made by the Income-tax Investigation Commission. The Select Committee was not in favour of any change in the existing system. The Taxation Enquiry Commission¹ again examined the question in greater detail and also came to the conclusion that no change was necessary. In support of their conclusion, the Taxation Enquiry Commission gave figures to show that in nearly 90% of the appeals disposed of by the Appellate Assistant Commissioners the orders of the Appellate Assistant Commissioner were either accepted by the assessee or confirmed by the Tribunal. We have examined the further figures for the years 1953-54, 1954-55 and 1955-1956 furnished to us by the Central Board of Revenue and they establish that 92% of the orders of the Appellate Assistant Commissioners have either been accepted by the assessee or confirmed by the Tribunal. From this it follows that only about 8% of the appeals disposed of by the Appellate Assistant Commissioners are reversed on appeal to the Appellate Tribunal. The value of the filtration made by the Appellate Assistant Commissioners cannot be ignored, and if the decisions in 92% of the appeals disposed of by them are accepted by the assessee or confirmed by the Appellate Tribunal, it follows that the disposals are not affected or vitiated by any extraneous influence and give satisfaction to the assessees concerned. Though we feel the force of the principle that appeals should be disposed of by an independent agency other than the one which is subordinate to the Central Board of Revenue, the figures furnished to us do not justify any alteration in the existing system. We therefore agree with the conclusion of the Taxation Enquiry Commission that a change in this behalf is neither necessary nor justified. We consider therefore that the Appellate Assistant Commissioners should continue to function as at present.

Appellate
Tribunal

90 The position, however, of the appeals to the Appellate Tribunal and the disposals made by them is entirely different. We feel that the existing system of appeals to the Appellate Tribunal and thereafter a reference to the High Court on a question of law either under section 66(1) or under section 66(2), is very cumbersome and causes unnecessary delay in disposing of the appeals so as to finalise the assessments. We have obtained State-wise figures regarding the institution of the appeals before the Appellate Tribunal and of the Reference Applications under section 66(1) and section 66(2) for the years 1955-56 and 1956-57

¹T E C. Report (1953-1954) Vol. II, pages 232 to 234 Paragraphs 62-66

During the year 1955-56 the total number of appeals instituted in the Appellate Tribunal was 8,553. The State-wise figures are given below :—

Andhra	290
Ajmer	55
Assam	106
Bhopal	39
Bihar	57 ²
Bengal	97 ²
Bombay	1912
Coorg . . . . .	..
Delhi	283
Hyderabad	205
Himachal Pradesh	8
Jammu and Kashmir	129
Kutch . . . . .	..
Madhya Pradesh	206
Madhya Bharat	30
Madras	1746
Mysore	110
Orissa	115
Punjab	324
PE 'SU	111
R. jasthan	86
Saurashtra	37
Travancore-Cochin	115
Tripura	1
Uttar pradesh	1047
Vindhya Pradesh	54
TOTAL	8553

The number of Reference Applications under section 66 (1) during the year 1955-1956 was 1,080 as per statement below :—

States	Reference application U/S 66(1)				Total	High Courts Order U/S 66 (2) in respect of ref. applications .		
	No. outstanding at the beginning of the year	No. instituted during the year	No. d'isposed of			No. of cases outstanding at the beginning of the year	No. of cases ,received during the year from the High Courts	No. of cases stated in- compliance with High Court orders
			Referred to High Courts	Rejected				
1	2	3	4	5	6	7	8	9
Bombay	91	275	..	..	201	11	21	20
Madhya Pradesh	8	14	..	..	20	4	7	8
Bhopal	1	..	..	..	1	..	..	..
Saurashtra	2	10	..	..	7	..	1	..
Kutch . . . . .	..	..	..	..	..	..	..	..

1	2	3	4	5	6	7	8	9
Andhra	32	31			50	17	38	86
Hyderabad	53	12			30	5	1	5
Uttar Pradesh	31	50			58	8		7
Vindhya Pradesh		4			4	1		
Madras	71	285			211	66	108	91
Travancore-Cochin	2	23			5	5	9	11
Mysore	3	59			57		3	
Coorg		2			2			
West Bengal	11	85			76		18	12
Assam		20			19		1	
Delhi	4	58			48	2	4	6
Punjab	12	55			36			
Rajasthan	2	7			6		2	
Madaya Bharat		4			4			
Pepsu	4				4			
Himachal Pradesh								
Ajmer	2	5			6			
Bihar	5	44			49	13	17	19
Orissa	13	30			39	2	2	3
Jammu & Kashmir		3						
TOTAL	347	1080	313	623	936	134	232	218

NOTE.—Figures in columns 7, 8 and 9 include cases in which High Courts, Orders u/s 66 (3) and 66 (4) were received. However the number of cases u/s 66 (3) and 66 (4) is quite small.

[In cases in which the reference applications were rejected by the Appellate Tribunal under section 66(1) the matter came up to the High Court under section 66(2) and the number of such applications during the year 1955-1956 was 232]

91 A statement of the appeals instituted during the year 1956-57 is given below (State wise figures are not available) —

1956-57

Appeals instituted in the year 1956-57

	Appeal by assessee	Appeal by department
Bombay Bench A	2 636	380
Bench B		
Bench C		
Allahabad Bench	1 191	55
Madras Bench	1 823	75
Calcutta Bench	1 18	143
Delhi Bench	908	91
Panaji Bench	529	1
Hyderabad Bench	419	52
TOTAL	8 694	799
TOTAL		9,493

These figures comprise appeals by the assesseees and also by the Department. The appeals instituted by the assesseees were 8,694 and by the Department 799, in all 9,493.

The number of Reference applications under section 66(1) filed during the year (1956-1957) was 1,014, as per statement below :—

State-wise statement showing institution, disposal and pendency of Reference Applications before the Income-tax Appellate Tribunal Bombay, during the year 1956-57.

States	Reference application u/s 66(1)					Total	High Court's orders u/s 66(2) in respect of reference applications		
	No. outstanding at the beginning of the year	No. instituted during the year	No. disposed of		No. of cases outstanding at the beginning of the year		No. of cases received during the year from the High Courts	No. of cases stated in compliance with H. Courts orders.	
			Referred to High Courts	Rejected					
1	2	3	4	5	6	7	8	9	
Bombay	165	332			286	12	19	24	
Madhya Pradesh	2	19			2	3	1	3	
Bhopal	..	..			..	..	..	..
Saurashtra	5	2			4	1	..	1	
Hyderabad	35	2			2	1	..	1	
Andhra	16	37			31	19	16	20	
Kutch	..	..			..	..	..	..
Uttar Pradesh	23	84			66	1	39	32	
Vindhya Pradesh	—	—			..	1	..	..
Madras	143	157			243	83	82	135	
Travancore-Cochin	20	24			28	3	10	11	
Mysore	5	10			9	3	3	..	
Pepsu	—	3			..	..	..	..
Coorg	—	—			..	..	..	..
Wes. Bengal	20	162			160	6	18	22	
Assam	1	11			12	1	1	1	
Tripura	—	—			..	..	..	..
Delhi	14	31			28	..	..	..
Punjab	31	42			40	..	..	..
Jammu & Kashmir	3	2			3	..	..	..
Rajasthan	3	13			9	2	..	2	
Madhya Bharat	—	—			1	..	..	..
Himachal Pradesh	—	1			1	..	..	..
Ajmer	1	16			3	..	3	3	
Bihar	—	57			48	11	7	18	
Orissa	4	9			9	1	6	6	
TOTAL	491	1014	360	625	985	148	205	282	

NOTE.—Figures in columns 7, 8 & 9 include cases in which High Courts Orders u/s 66(3) & 66(4) were received. However, the number of cases u/s 66 (3) and 66 (4) is quite small.

[Out of the applications rejected by the Tribunal, 205 cases were taken up to the High Court under section 66(2)]

92. The average, therefore, of the appeals instituted before the Tribunal may be taken up roughly at 10,000 per year. The largest number of appeals is from Bombay, Madras, Uttar Pradesh and Bengal also contribute a large number of appeals. In other States, except in Bihar where the number is nearly 600 per year, the number of appeals instituted is comparatively small.

93. The Tribunal is constituted the final fact-finding authority for four taxes—income-tax, wealth-tax, expenditure-tax and gift tax, and it is also proposed to make it the final fact finding authority under the Estate Duty Act. We are constrained to observe that men of the requisite calibre and independence are not being recruited for discharging so heavy a responsibility as that of the final fact-finding authority under the new pattern of taxation. There are many complaints that the disposal of appeals by the Appellate Tribunal is very unsatisfactory for a variety of reasons. Often the judicial and independent approach which is necessary in the final fact finding authority, is not displayed by the Tribunal. In several cases the determination of complicated questions of fact and law is done in a very perfunctory manner. Very often, the Tribunal does not clearly record its findings of fact or its reasons for arriving at its findings. In a number of cases, factual or legal contentions raised by the parties are not dealt with at all, resulting in applications for rectification being made subsequently to the Tribunal for considering the points omitted to be dealt with in the original order of the Tribunal. While dealing with the references under section 66(1) and section 66(2), High Courts had occasion to comment¹ upon the unsatisfactory nature of the orders passed by the Appellate Tribunal and also on the unsatisfactory statements of case drawn up by them in the references under section 66. The High Courts had to remit the cases to the Appellate Tribunal for a further and better statement of the case with fuller particulars. To give satisfaction to the large number of assessees a decision of an independent and good appellate authority is an undoubted necessity, if justice is to be done to them. There is considerable delay in disposing of the appeals and very often it is said that they, the Tribunals, spare very little time for the appellate work² with which alone they are concerned. Very often the Members of the Tribunals attend the sittings at any time they choose thereby not conforming to regular office hours for the disposal of the work. A Bench of two members of the Tribunal hears the appeals, but in practice the contribution to the decision of the case by one of the members is often not appreciable.

¹See extracts given in the next para.

94. The following extracts from the decisions of courts will show how unsatisfactorily the Appellate Tribunals have been functioning :—

Extracts from judgments.

*Hanumantram Ramnath vs. C.I.T., Bombay*¹.

"This reference must go back to the Appellate Tribunal for the finding of further facts. As this is the second reference we have been constrained to send back out of the last ten which have come before us, and as in these cases not only is public time and money wasted, but there is also obviously a hardship cast upon the assessee, it is in my opinion necessary that certain matters should be stated for the guidance of the Appellate Tribunal in preparing further cases"

*Hira Mills Ltd. Cawnpore vs. I. T. O., Cawnpore*².

"Those, as we understand them, are the facts to be gathered from the statement of the case and the accompanying judgments and orders. Perhaps we may properly observe that it would be a practice more in conformity with section 66(1) of the Act and with general convenience, if the statement of the case itself had contained all the relevant facts, rather than that they should have had to be sought for in the judgments".

*Badar Shoe Stores, In re.*³

"We deprecate the practice, which is becoming too common, of omitting a sufficient statement of facts from the statement of the case and of referring this Court to a miscellany of other documents for the collection of the full facts necessary for determination of the question of law submitted, and we shall take the opportunity of referring to the unfortunate consequences of this practice at a later stage"

*P. M. Huthee Singh & Sons Ltd. vs. C.I.T.*⁴

"I must point out here that both in the statement of case and in the judgment there are certain inaccuracies. When a fact-finding authority is in the position of the Tribunal (whose findings of fact are considered conclusive), it is always very desirable for them to be accurate in their statement of facts. I would like to join the learned Chief Justice in emphasizing the duty cast upon the Appellate Tribunal with regard to findings of facts. Under the Act it is the final fact-finding authority and I think it is the duty of the Tribunal when they submit a statement of case to the High Court to state the facts clearly, carefully

¹(1945) 13 I. T. R. 203 at 206.

²(1945) 14 I. T. R. 417 at 427.

³(1946) 14 I.T.R. 431 at 433.

⁴(1946) 14 I.T.R. 653 at 659.

and precisely After all the High Court only exercises an advisory jurisdiction Its jurisdiction is to advise the Tribunal on questions of law submitted to it and that advisory jurisdiction cannot be exercised usefully unless the fact-finding authority submits the facts carefully, clearly and accurately I am sorry to say that in the reference with which we are dealing both in the statement of case and in the judgment there are several inaccuracies which in some cases are patent A little more care would have been sufficient to make the Tribunal realise that the statement of facts prepared by them was not as correct and as satisfactory as it should have been I hope that in future the Tribunal will bear this in mind when preparing the statement of case"

Messrs Gobindaram Bros Ltd vs CIT¹

The supplemental case returned to us by the Tribunal, and which is now before us is highly unsatisfactory The Tribunal appears to be far more concerned with excusing the statements of fact in the first case which are unquestionably contradictory, than with complying with the directions of this Court given under Section 66(4) of the Income-tax Act

"The matter was referred back to the Tribunal to record its finding of fact more clearly, and implicit in that direction is the taking of further evidence if there is no other way of determining facts in order that the Tribunal may make its finding clear For the Tribunal to say that because a fact was not before it when they disposed of the assessee's appeal we are unable to include it in the case at this stage of the proceedings", is a most surprising statement and is one which indicates that the Tribunal does not appreciate the duties cast upon it when this Court refers a matter back under section 66(4) The reference back to the Tribunal was to record its finding more clearly and after a lapse of one year and ten months the matter now comes back with nothing new except the affidavit of Mr Pralhadrai Brijlal which is annexed to the supplemental case"

Bikaner Trading Company, Calcutta vs CIT²

"We have so far endured with patience the type of statements of cases which have been submitted to this Court in connection with the references that have come up this session but we think that the limit has been passed and we ought to make some observations One common feature of these statements of cases is that the appeal was heard by two members whereas the statement of the case in almost every case was drawn up by different members In drawing up the statement they do not seem to have

¹(1946) 14 ITR 764 at 770

²(1953) 24 ITR 419 at 422

always considered it necessary to refer to the appellate order, nor necessary to be exact in the statements they made, nor necessary to make a full statement of the relevant facts. Most of the statements of cases are sketchy in the extreme and, were one to rely upon them alone, it would be impossible to answer any question at all. It has been a frequent experience this session to find two members of a Tribunal deciding a particular case in a particular manner and one of those members, acting with a third member, stating a case for this Court which differed materially from the case made and found at the hearing of the appeal. We shall not say, out of respect for the Tribunal, that the members have acted in a careless manner, but we feel bound to say that the manner in which they have discharged their duty of drawing up statements of cases for this Court can only be called carefree".

*Calcutta Co. Ltd vs. C.I.T.*¹

"Unfortunately, the treatment of the question by the authorities below has been of a somewhat summary character presumably because it was raised and argued before them in a superficial form. But even if such was the case, there is hardly any justification for the Tribunal failing to realise at least what facts were required to be found and stated. The statement of the case is sketchy and bare and like most of the statements we have had to deal with during this session has hardly any appearance of a case seriously stated".

*C.I.T. West Bengal vs. Hanuman Prasad Bagria*².

"In our opinion, the statement in the case referred are clearly insufficient to enable us to determine the question raised. The appellate order passed in the case is a striking example of what appellate orders should not be and the statement of the case itself is an example of the consequences that must sometimes follow when the appeal is heard by two particular members of the Tribunal and the reference is made by two other members".

"This finding of the Income-tax Officer and the Appellate Assistant Commissioner was reversed by the Appellate Tribunal by an order which reads like an order passed by Honorary Magistrates at summary trials".

(Italics are ours).

*Dhirajilal Giridharilal vs. C.I.T., Bombay*³.

"It is apparent from the following quotation from the judgment of the Tribunal that not only was its approach to the question raised before it tainted with suspicion, but it took into consideration a number of circumstances based purely on conjectures and surmises and for which there was not a scintilla of evidence on the record".

¹(1953) 24 I.T.R. 454 at 459.

²(1953) 24 I.T.R. 495 at 497, 498.

³(1954) 26 I. T. R. 736 at 739 (S. C.).

*Shantikumar Narotham Morarji vs C.I.T.**

'There is a finding given by the Accountant Member in the following words 'We understand that no part of the borrowings were utilised in the agency firm business and therefore the interest paid was not incurred for the purposes of the business' Mr Palkhivala has rightly quarrelled with the nature of this finding With respect to the learned Accountant Member it is difficult to understand how a judicial tribunal can record a finding in the language in which this so-called finding has been recorded. The duty of a fact-finding tribunal is to find facts, and not to understand that certain facts may exist or may have been established'

*Indian Steel and Wire Product Ltd vs C.I.T.**

Before parting with this case, I find necessary to repeat once again what I had occasion to say during the last sittings of this Bench If this Court cannot depend on the Tribunal even for the accuracy of the summary of the orders passed by itself, it becomes difficult to deal with these references particularly as this Court is bound by the statements contained in the statement of the case and should not be put to the necessity of verifying and if necessary correcting the summaries given of the various orders What makes the inaccuracy strange in the present case is that one of the members who was responsible for the statement of the case was himself a member of the Bench which had passed the appellate order relating to the first of the two chargeable accounting periods"

*The Bhopal Trading Co, Kanpur vs C.I.T.**

We are not undertaking the responsibility of framing the questions ourselves as the statement of the case as also the appellate orders are as is too frequently the case, wholly unsatisfactory"

*CIT vs Malchand Surana**

"I confess I do not feel altogether happy the way in which the facts have been found in this case or the manner in which the case has been stated'

'Before I take up the question on the merits, I would say a word in passing as regards the appellate order of the Tribunal. The whole of it appears to be based upon a misconception of both fact and law "

'It is perfectly clear that the Tribunal failed to apply themselves to the real question before them and indeed their order, one regrets to find does not indicate that they had any appreciation of what the real question was "

* (1955) 27 I T R 69 at 80 (Bombay H C.)

* (1955) 27 I T R 43 at p. 445 & 446 (Calcutta H C.)

* (1955) 28 I T R 478 at p. 485 (Allahabad H C.)

* (1955) 28 I T R. 684 at 687 690 696 (Calcutta H C.)

95. The present procedure leads to delay also. If the Tribunal refuses to make a reference to the High Court where it should have done so, the assessee or the department have had to go to the High Court under section 66(2) and this has led to considerable delay in giving a finality to the assessment. The extracts given above would also show that the statements of cases submitted by the Tribunals to the High Court are scrappy, with the result that the High Court has had to ask for a supplementary statement in several cases.

96. For these reasons we are strongly of the opinion that the Appellate Tribunal should be abolished and that a direct appeal should be provided both on questions of fact as well as of law to the High Court from the orders of the Appellate Assistant Commissioner. The assessee should have the satisfaction that the facts of the case and the law applicable to it have been examined by a competent authority. It would also save the time of the High Court, as it would avoid the necessity for a reference to the High Court on a question of law either under section 66(1) or under section 66(2). We have therefore, provided¹ an appeal to the High Court from the decisions of the Appellate Assistant Commissioner. Where the amount in dispute is Rs. 7,500 or more, the appeal will be on fact as well as on law. In other cases the appeal will be only on questions of law.

Abolition of
the Appellate
Tribunal pro-
posed.

It is stated that the disposal by the High Courts may cause delay, particularly as the rules of the High Courts require printing in first appeals. To obviate this difficulty, we suggest that by a rule made by the appropriate authority the printing of records in such cases may be dispensed with, and the Department and the assessee may be allowed to furnish typed copies of papers on which they intend to rely at the time of the hearing of the appeal before the High Court.

97. We have also examined the financial implications of the proposal and we are satisfied that it does not involve the States in any extra expenditure, as all expenditure necessitated by the appointment of more Judges in the High Court and the necessary staff can be met by the fee that will be levied on the appeals instituted in the High Court. At present the fee is Rs. 100 in case of appeals to the Appellate Tribunal and, the amount realised in the year 1955-56 by the Tribunal is Rs. 8,46,390 which, of course, includes also fees for Reference Applications. (The department does not pay any fee when it files an appeal or asks for a reference). The expenditure incurred in that year for the Appellate Tribunal is Rs. 8,74,684. We have not got the figures for 1956-57. Even if the fee is restricted to Rs. 100 per appeal and if 10,000 appeals are filed, all the States will get an income of Rs. 10,00,000. If 20

¹Vide clause 260, App. I.

Judges are appointed for all the High Courts, the total salary payable per year will be Rs 840,000 leaving a surplus for the expenditure on the additional staff that would be required by the appointment of additional Judges

If we consider the position State-wise, the highest institution of appeals is in Bombay and may be taken roughly at 2000 appeals per year. The Bombay State will get a fee of Rs 200,000. Even if four more Judges are appointed their total salary per year will be Rs 1,68,000, leaving a surplus for the additional staff. Similarly, Madras may require three Judges, Bengal may require two Judges and Uttar Pradesh may require two or three Judges. In other States like Bihar and Punjab an additional Judge may be required. It will, therefore, not entail any additional expenditure from State funds which could not be met from the fee leviable on the appeals instituted in the respective State High Courts. As observed already, the work in which the High Courts are now engaged namely disposing of references either under section 66(1) or under section 66(2) will *pro tanto* be reduced, and this is an additional advantage for the High Courts.

98 Rules will necessarily have to be made to regulate the procedure for the disposal of the appeals expeditiously. Delay is occasioned by the printing of records which will not be necessary. If the rule making power is conferred on the various High Courts there may not be uniformity in that behalf. We, therefore, think that it will be more appropriate to confer the rule making power upon the Supreme Court¹ as was done in the case of the Companies Act, 1956. As regards the levy of the fees and the scales which are to be prescribed, it may not be possible for the Centre to prescribe the fee. Some method should be adopted to make the Court-fee payable on the memoranda of appeal presented to the High Court in such matters uniform in all the States. We have not therefore made any definite proposal in this behalf.

Appointment
and training
of Appellate
Assistant Com-
missioners

99 In view of the recommendation made by us for the abolition of the Appellate Tribunal, and as appeals would henceforth lie to the High Court from the Appellate Assistant Commissioners' orders, we consider that Government should ensure that the posts of Appellate Assistant Commissioners are held by experienced and senior officers.

100 It will be more satisfactory if experienced and senior officers of the Department hear appeals.

101 The Appellate Assistant Commissioner should also, in our opinion, be given some training in judicial practice and procedure by being attached to a Judge of a Civil Court i.e., a District Judge, for a period of, say, three months. This will be very necessary because the order of the Appellate Assistant Commissioner should be written,

¹See clause 277, App. I

more or less, like a judgment and should make mention of the points for determination, and the findings thereon. We consider that if Appellate Assistant Commissioners are given this type of training, it will inspire greater confidence in the litigant public.

102. It may be recalled in this connection that when the Appellate Tribunal was not in existence, i.e., prior to 1939, the reference to the High Court, though directed against the order of the Assistant Commissioner, was made by the Commissioner of Income-tax himself. Though an officer of the status of Commissioner of Income-tax may not hear all appeals, it would be desirable if appeals against assessments of incomes in excess of rupees one lakh were heard by the Commissioner of Income-tax or by an officer of equal status. If this recommendation is accepted, the necessary amendments may be made in the Act. Other appeals should be heard by senior officers whose scale of pay is attractive. We would recommend for Appellate Assistant Commissioners a scale of pay intermediate between the present Appellate Assistant Commissioner's scale and the present Commissioner's scale.

103. As second appeals would lie (if our proposal is accepted) to the High Court and as the smaller assessee may not be able to afford the expense involved in such an appeal, we would recommend the free use by commissioners of Income-tax of their judicial powers to give relief to the smaller assessee. In the case of smaller assessee the Commissioner should treat an application in revision as an appeal. Administrative instructions to this effect may be given by the Central Board of Revenue.

104. The other important change which has been made in this Chapter is the provision¹ for appeals against all orders of the Income-tax Officers which are prejudicial to the assessee, e.g., an order under section 35 the levy of interest under section 18A (6), an order refusing to correct a recovery certificate, an order refusing to treat the assessee as not in default and other similar orders.

105. The provisions of the existing Act relating to penalties have been grouped together in this Chapter.

No change has been made in the substance of these provisions.

106. The provisions of the existing Act relating to offences and prosecutions have been grouped together in this Chapter. No change of substance has been made.

107. The provisions of Chapter IXA, Recognised provident funds, have been incorporated in this Chapter, with suitable modifications explained in the notes to the relevant clauses.

¹See clause 254, sub-clauses (d), (j), (k) and (l), App. I.

Commissioners.

Other changes.

Chapter XXII.
Penalties imposable by Income-tax authorities.

Chapter XXIII.
Offences and prosecutions.

Chapter XXV
Special provision relating to certain Provident Funds.

108 Provisions relating to approved superannuation funds, contained in Chapter IX B, have been reproduced in this chapter with suitable modifications explained in the notes to the relevant clauses

109 All the other provisions of the Act which are not covered by the earlier Chapters have been grouped together in this Chapter

The important changes made in this Chapter are as under —

(1) *Authorised representatives*—We consider that there is no justification for permitting a person who is not a lawyer or a chartered accountant to appear in the income-tax proceedings. The Income-tax Officer exercises powers which are often far more responsible than the powers similarly exercised by a civil court or a criminal court. When persons other than lawyers are not allowed to appear before the civil court and the criminal court, there is no reason why persons who are not entitled to appear before such courts should be permitted to appear in an income-tax proceeding. An exception should however be made in favour of chartered accountants as they assist companies in the maintenance of accounts. Moreover, they have certain obligations under the Companies Act in relation to the preparation of the accounts of companies. We have therefore provided that appearance in income-tax proceedings be confined to lawyers and chartered accountants.

In order to protect the interests of those persons who are, under the provisions of the present Act entitled to appear in the income-tax proceedings, we have provided for the continuance of their right to appear in the income-tax proceedings. We have however, provided that they should be registered as Income-tax Practitioners. We are also of the opinion that there should be a disciplinary body to control such Income-tax practitioners. We have therefore made suitable changes in the provisions of sections 59 and 61.

(2) *Service of notices*—We have provided for the mode of service of notice under the Act in the assessment of dissolved firms dissolved associations and disrupted HUFs also.

(3) *Rules*—We have added a provision authorising the Central Board of Revenue to make rules relating to the issue of tax verification certificates. Such certificates have been found useful in practice and it is desirable to place them on a statutory footing. We have also added a provision for making rules relating to the constitution of an authority to take disciplinary action against Income-tax practitioners (other than lawyers and Chartered Accountants).

Schedules

110 The Schedules which we propose to annex to the Act are as under —

First Schedule—relates to insurance business *

*See clause 324 App. * and clause 329 *ibid*

*See notes on the Schedule for the changes made

Second Schedule.—Brings together in one place the provisions pertaining to the procedure to be adopted by the Collector for the recovery of tax on a certificate issued to him.

Third Schedule.—Deals with the procedure to be adopted by the Income-tax Officer who is empowered by the Commissioner to recover tax by distraint and sale of movable property.

111. In the preparation of notes on clauses we have departed from the method adopted by us in our previous reports. In the previous reports we have followed the order of the sections in the *Act under revision* and wherever new provisions were suggested, they were dealt with in appropriate places. This method could not be followed in revising this Act (Income-tax Act) as we have reshuffled all the sections and sub-sections of the Act. Hence the order of the clauses in the *proposed draft* has been followed in preparing the Notes on clauses. Scheme of notes on clauses.

112. A word may be said about the increased number of the sections in the draft.¹ The U.K. Act of 1952 contains 532 sections and 25 Schedules. The existing Income-tax Act has 67 sections and one Schedule. One section (Section 10) of the existing Act however, covers 14 printed pages in the Income-tax Manual, and some of the sections in the Act, though bearing one number have the letters A to V added e.g., sections 58A, and 58B. The 67 sections of the Act cover 186 printed pages in the Income-tax Manual. The actual number of sections in the existing Act is not 67, but about 120. The number of sections in the draft is thus only two and a half times the number in the existing Act. The increase in the number of sections is due to the fact that the existing sections have been split into a number of sections. It is hoped that the total coverage of the draft in printed pages will not show any appreciable increase. Increase in number of sections.

113. Appendix I contains our proposals in the form of draft clauses. Scheme of Appendices.

Appendix II contains comparative tables showing the existing provision and the corresponding provision in the draft in Appendix I.

Notes on clauses have been appended at the end. These explain, with reference to each clause in Appendix I, changes made by us in the form or substance of the existing provision.

114. For convenience of reference, we have given at the end of this part of the report two lists, the first containing a summary of changes of importance proposed by us which have been embodied in the draft in Appendix I, and the second containing a list of recommendations made by us which have *not* been embodied in the draft in Appendix I. Lists appended to the report.

¹The draft proposed by us contains 329 clauses and Three Schedules.

LIST I

Summary of important changes proposed in the Income-tax Act and embodied in the Draft Clauses in Appendix I

- Existing Sec. 2 The definition of "assessee" has been amplified to cover all the situations in which a person becomes assessable for, or liable for the payment of, tax or other sum.
Draft Cl 2(5)
- Existing Sec. 2 Several new definitions have been added, important amongst them being 'assessment', 'assessment year', 'average rate of income-tax and super-tax' and "tax".
Draft Cl 2
- Existing Sec. 2 (4A) Item (ii) of the existing definition of Capital asset, excluding land from which the income derived is agricultural income, has been redrafted and replaced by the words "any agricultural land in India"
Draft Cl 2 (10)
- Existing Sec. 2 (8) The existing definition of "Magistrate", which includes a Second Class Magistrate empowered by the Central Government (or in the State of Jammu and Kashmir by the State Government) to try offences under the Act, has been altered so as to confine the power to First Class Magistrates throughout India.
Draft Cl 2 (25)
- Existing Sec. 3 The present enumeration of the chargeable entities that is "individual, Hindu undivided family" etc has been replaced by the word "person" This will cover all entities having legal personality besides the entities enumerated in the General Clauses Act
Draft Cl 3 (1)
- Existing Sec. 4 (3)(i) With reference to the exemption for income derived from property held under trust etc. for religious or charitable purposes, the following changes have been made :—
Draft Cl 12 (2), 12 (3), 12 (4)
- (i) it has been made clear that the exemption is available in the case of a business, held on trust, subject to the conditions given in the existing proviso (b),
- (ii) it has also been made clear that the exemption is available to business carried on by institutions not subject to trust
- Existing Sec. 4 (3) (vi) With reference to the exemption for special allowances or benefits granted to an employee to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment, the words "wholly and necessarily" have been replaced by the words "wholly and exclusively" The requirement of necessity has been omitted
Draft Cl 11 (15)
- Existing Sec. 4 (1) (x) The exemption for income received by a Consul General, Consul or Trade Commissioner etc. is at present available to Indian citizens also. A requirement that the person so exempted should not be an Indian citizen has been added, on the lines of existing section 4(3)(x) (c) and (e)
para. (b) & (d),
Draft Cl 11 (7) (ii) and 11 (7) (iv)

The exemption in respect of salaries of members of Existing Sec. Nepalese military forces serving with the armed forces of 4 (3) (xi) India or of members of Indian State forces, has been omitted in the draft). as obsolete.

The exemption in respect of income received by an Existing Sec. employee of foreign enterprise is at present available to 4 (3) (xv) Indian citizens. Under the draft it has been confined to Draft Cl. 11 (8). foreigners.

The exemption in respect of salaries received by foreign- Existing Sec. ners for services rendered as technicians has been 4 (3) (xiva) extended to services rendered before the actual commence- Draft Cl. 11 (9) ment of the business. Explanation 1.

Certain exemptions enjoyed at present by virtue of Existing Sec. notifications under section 60 have been added in the Act. 4 (3). These relate to scholarship, and income of Universities or Draft Cl. 11 (17) and 11 (24). other educational institutions not established for profit.

The condition for residence in the case of a person who Existing Sec. has been in India within four preceding years, at present, 4A (a) (iii) requires the presence of that person in India "otherwise Draft Cl. 6. than by an occasional or casual visit". This condition has been made more specific, by requiring the person to be present for at least 30 days in the previous year concerned.

The existing provision authorising the Income-tax Offi- Existing Sec. cer to treat a person as a resident if he is satisfied that 4A (a) (iv) the person is likely to remain in India for not less than Draft Cl. 6. three years has been omitted.

A provision has been made to the effect that a person Existing Sec. who is resident in respect of one source of income is to be 4A treated as resident for all other sources. Draft Cl. 6.

A new provision regarding transfer of cases from one Existing Sec. Appellate Assistant Commissioner to another has been 5 (6) added. Draft Cl. 131 (3) (b).

With reference to the power of the Board or the Com- Existing Sec. missioner to transfer cases from one Income-tax Officer to 5 (7A) another, a provision has been added requiring opportunity Draft Cl. 132 (2). to be given to the assessee before the transfer is ordered (except in special cases).

It is proposed to abolish the Appellate Tribunal. Ap- Existing Sec. peals from the Appellate Assistant Commissioner will lie 5A to the High Court. (Omitted)

Salary received from foreign Government has been Existing Sec. specifically made taxable under the head "Salary". 7 (1) Draft Cl. 17 (1).

Specific provision has been made in respect of salaries Existing Sec. paid in arrears. 7 (1). Draft Cl. 15 (c).

- Existing Sec 7 (2) (iii) Draft Cl 16 (iv) The allowance for expenses incurred by an employee in the performance of his duties has been redrafted by omitting the words "necessarily" from the requirement that the employee should be required to spend the amount 'wholly, necessarily and exclusively' in the performance of his duties
- Existing Sec 8 Draft Cl 18 Income assessable under the head "Interest on securities" is at present chargeable if it is "receivable". This has been replaced by a provision charging such interest when "received". The receipt basis has thus been substituted in place of the present provision
- Existing Sec 8 Draft Cl 21 (ii) Sums expended for realising interest on tax-free securities have been disallowed as a deduction in computing the income chargeable under the head "Interest on securities"
- Existing Sec 8 Draft Cl 21 (iii) Interest paid on moneys borrowed for the purpose of investment in tax-free securities has been made inadmissible as a deduction in computing income under the head "Interest on securities"
- Existing Sec 8 Draft Cl 101 Reasonable sums spent on realising interest on tax-free securities are proposed to be allowed to be deducted, for the purpose of super-tax, in computing income chargeable under the head "Interest on Securities". If money has been borrowed for investment in such securities, then interest paid on the money so borrowed is also proposed to be allowed to be similarly deducted
- Existing Sec 9 (1) Draft Cl 23 (2) Rules for furnishing guidance to the Income-tax Officer in determining the annual value of tenanted property have been added
- Existing Sec 9 Draft Cl 24 (xi) Irrecoverable rent has been made an admissible deduction for computing income chargeable under the head "Income from property" (At present the deduction is admissible by virtue of a notification only)
- Existing Sec 10 (2) (vi) Draft Cl 33 main para The provision relating to development rebate has been changed as regards the year in respect of which the rebate is to be allowed. The existing section allows the rebate only for the year of acquisition or installation; under the provision as proposed it will be available in the next year, if the ship or machinery is actually put to use for the first time in the next year
- Existing Sec 10 (2) (xi) Draft Cl 36 (6), 2nd proviso If the bad debts written off in an earlier accounting year are not allowed by the Income-tax Officer for that year, they will be allowable for a subsequent accounting year, if the Income-tax Officer is then satisfied about the irrecoverability of the debt. (As to the converse case, see below under existing section 35)
- Existing Sec 10 (2B) and (2C) (omitted in the draft). The provisions for deposit of profits by companies have been omitted.

A new provision has been added whereunder in computing income from business, profession or vocation, bonus paid in pursuance of the award of an industrial Tribunal will be allowed as a deduction, even if the amount of the bonus is not reasonable.

Existing Sec.
10 (2)
Draft Cl. 36
(2) (ii).

A new provision has been added whereunder contributions made by an employer to funds established for the benefit of his employees have been listed as admissible deductions for computing income from business etc., even if the fund is not a recognised provident fund or an approved superannuation fund, under certain conditions.

Existing Sec.
(10) (2)
Draft. Cl. 36
(4) (b).

A new provision has been added to the effect that buildings constructed by an employer for the residences of his employees should be treated as buildings used for the purpose of the employer's business, if the occupation by the employees of the buildings is subservient to and necessary for the purpose of the employees' duties.

Existing Sec.
10
Draft Cl. 43.

A new provision has been added laying down rules for estimating the value of the consideration received in a transaction of exchange. (This is with reference to charging of tax under 'Capital gains'.)

Existing Sec.
12B
Draft Cl. 53.

The scope of the existing provision, relating to power of the Income-tax Officer to treat the fair market value of a capital asset as the value of the consideration for which the sale etc. of the asset is made (where the sale is effected with the object of avoidance etc. of the liability of the assessee to tax under capital gains), has been narrowed down by confining the power to a case where the actual consideration is not correctly recited in the deed of sale etc. On the other hand, the scope has been widened by deleting the requirement that the transaction must have been entered into with a person directly or indirectly connected with the assessee.

Existing Sec.
12B (2), 1st proviso.
Draft Cl. 54.

It has been made clear that where the accounts of the assessee are not correct and complete, the assessment will be a best judgment under section 23(4). The power to compute the income "upon such basis and in such manner as the Income-tax Officer may determine" (existing section 13, Proviso) will be confined to a case where the accounts are correct and complete.

Existing Sec.
13
Draft Cl. 150
(1).

A new provision has been added wherein interest paid by an assessee on money borrowed for investing his capital in a firm has been listed as an admissible deduction in computing his income comprising his share in the firm's profits.

Existing Sec.
16 (1) (b)
Draft Cl. 69
(3).

It has been made clear that section 16(1)(c), 3rd Proviso, which removes from the scope of the section income arising by virtue of a settlement etc. which is not revokable for a period of more than six years etc., does not apply in a case where the assets remain the property of the settlor etc. In other words, where there is no transfer of the corpus, the proviso will have no application.

Existing Sec.
16 (1) (c)
Draft Cl. 64.

- Existing Sec 16 (3) (b) Draft Cl 67 (v)** The existing provision, whereunder income arising from assets transferred to any person etc for the benefit of a minor child of the assessee is regarded as the assessee's income in certain cases, has been modified so as to exclude cases where the minor child is a married daughter
- Existing Sec 18 (3A) (3B) Draft Cl 201 (b) and 204 (1) (b)** It has been made clear that the rate applicable for deduction of super-tax is one in force for a company which has not made the arrangements for deduction of super-tax referred to in section 18(3D)
- Existing Sec 18 (7) Draft Cl 209** A new provision has been made imposing a first charge upon the assets of a person who, after deducting tax under the Act, fails to pay it into the Government Treasury
- Existing Sec 18 (7) and 7 (1) 2nd prov v so Draft Cl 213** A general provision has been made to the effect that where tax is deductible at source, the assessee shall not be called upon to pay the tax himself unless he has received the income without such deduction (The existing provision is confined to salary)
- Existing Sec 18A (1) Draft Cl 215 (3)** A provision has been added to the effect that advance payment of tax will not apply in respect of income tax on dividends
- Existing Sec 18A (4) prov v so Draft Cl 221** The rate of interest to be paid by an assessee who does not pay advance tax on commission receipt within fifteen days of the date on which the income is received, has been reduced from 6 per cent to 4 per cent
- Existing Sec 18A (6) Draft Cl 223 (1)** Interest payable by an assessee in a case where the tax estimated by him falls short of 80 per cent of the tax regularly assessed, is made to run not from the 1st day of January of the year of payment but from the 1st day of April of the next financial year
- Existing Sec 18A (7) Draft Cl 224** The rate of interest payable by an assessee in cases of under-estimate of advance tax has been reduced from 6 per cent to 4 per cent
- Existing Sec 22 (1) Draft Cl 143 (1) (a)** Instead of the general notice requiring all persons to submit a return of income, a provision has been made for the compulsory submission of the return by every person who is assessable in respect of his income or in respect of any other person's income. The return will have to be submitted by the 30th June, each year
- Existing Sec 22 (1) Draft Cl 143 (1) (b)** A provision has been added to the effect where a return of income is sent to an Income-tax Officer who has no jurisdiction over the assessee, he shall forward it to the Income-tax Officer having such jurisdiction
- Existing Sec 23 Draft Cl 146 (2)** A new provision has been added clarifying the power of the Income-tax Officer to make such inquiries as he may think necessary for the purpose of assessment
- Existing Sec 23 Draft Cl 146 (3)** A new provision has been added requiring the Income tax Officer to give the assessee an opportunity of rebutting any material which is proposed to be used for the purpose of assessment (An exception has however been made for 'best judgment' assessment.)

The power of the Income-tax Officer to take into account material gathered by him (in addition to the evidence produced in the case) for the purposes of assessment, has been clarified. Existing Sec. 23
Draft Cl. 147 (3).

It has been made clear that a "best judgment" assessment is to be made after consideration of the material which the Income-tax Officer has gathered. Existing Sec. 23 (4)
Draft Cl. 148 (1).

An indication of the material which the Income-tax Officer may use in an assessment under section 23(3), or 23(4), has been given. Existing Sec. 23.
Draft Cl. 149.

A specific provision has been added laying down the right of set off of loss from one business against profits in any other business. Existing Sec. 24 (1)
Draft Cl. 72.

The provision relating to set off of losses has been modified in respect of set off against capital gains. A loss sustained under any head other than capital gains cannot be set off against capital gains, under the provision as proposed. Existing Sec. 24 (1)
Draft Cl. 73 (1) and 75.

In respect of the assessment of a person about to leave India, it has been provided that the period of notice to be given by the Income-tax Officer may be shortened even in respect of the assessments for earlier previous years. Existing Sec. 24A
Draft Cl. 184 (6).

For the assessment of a person about to leave India, a time-limit of three months has been provided for completing the assessment, where the assessment is made under the special procedure given in existing section 24A. Existing Sec. 24A.
Draft Cl. 184 (7).

The section relating to partition of a Hindu undivided family has been made applicable in respect of *partial* partition also. Existing Sec. 25A
Draft Cl. 181 (4).

A new provision has been added laying down which Income-tax Officer is entitled to assess a Hindu family after its partition. Existing Sec. 25A
Draft Cl. 181 (7).

The provision relating to assessment after partition has been extended to penalties and other sums. Existing Sec. 25A
Draft Cl. 181 (8).

A definition of partition has been added. Existing Sec. 25A
Draft Cl. 181 Expln.

It has been made clear that an application for the registration of a firm may be made even after the dissolution of the firm. Existing Sec. 26A
Draft Cl. 191 (2).

The provision (at present contained in the rules) relating to the time within which a firm should be registered has been modified. It has been provided that the application should ordinarily be made before the expiry of the previous year in respect of which registration is being sought. Existing Sec. 26A
Draft Cl. 191 (4).

The provision requiring that the individual shares of the partners should be "specified in the partnership deed" has been altered, so as to allow registration where the shares, Existing Sec. 26A
Draft clause 191 (1).

though not specified in the instrument, can be ascertained from that instrument or from the partnership deeds of any connected firms

Existing
Sec. 26A.
Draft Cl
191 (7)

The provision (at present contained in the rules) relating to renewal every year of the registration of a firm has been modified. So long as there is no change in the constitution of the firm or the shares of the partners, a formal application for renewal will not be necessary and it would suffice if the firm files a declaration, with the return of the income, to the effect that there has been no change as aforesaid

Existing
Sec. 26A
Draft
Cl 192 (2)

A provision prohibiting the Income-tax Officer from rejecting an application for registration of a firm on technical grounds has been added

Existing
Sec. 26A
Draft
Cl 192 (4)

A time-limit has been provided within which an application for registration of a firm must be disposed of by the Income tax Officer

Existing
Sec. 26A
Draft
Cl 193 (1)

It has been made clear that the only ground on which the registration of a firm can be cancelled is misrepresentation. It has also been provided that the firm must have an opportunity of being heard before cancellation, and that cancellation can be ordered only with the previous approval of the Inspecting Assistant Commissioner

Existing
Sec. 26A
Draft
Cl 193 (5)

A time limit has been laid down within which registration of a firm can be cancelled

Existing
Sec. 30 ()
Draft
Cl 254

It has been made clear that an objection as to the status under which the assessee is assessed can be raised by way of appeal

A new provision authorising appeals in respect of orders passed under existing section 35 (rectification of mistakes etc) has been added

Various orders relating to interest passed under section 18A (advance payment of tax) have been made appealable in appropriate cases

The following orders have been made appealable —

- (1) An order passed by the Income tax Officer on an assessee's application for withdrawal or cancellation of a recovery certificate issued to the Collector,
- (2) An order passed by the Income-tax Officer refusing an assessee's request to treat him as not in default in view of an appeal.

Existing
Sec. 31
Draft Cl
259 Expl

It has been made clear that an Appellate Assistant Commissioner, in disposing of an appeal is not confined to the grounds raised by the appellant in the appeal and may redetermine any matter which fell to be decided by the Income-tax Officer in the course of the proceedings which led to the order in appeal.

Appeal to the Appellate Tribunal is replaced by appeal to the High Court, and the Tribunal is to be abolished.

Existing Sec. 33. Draft Cl. 260 (1).

It has been made clear that an order passed by the Appellate Assistant Commissioner rejecting or refusing an appeal without a decision on merits is appealable.

Existing Sec. 33. Draft Cl. 260 (1).

The power to reopen an assessment any time, where the income that has escaped assessment in the past amounts to one lakh of rupees or more, has been modified.

Existing Sec. 34 (1), 1st. prov. so, item (ii). Draft Cl.

Only the incomes for the sixteen assessment years prior to the year in which a notice under section 34 is issued will, it is proposed, be taken into account in arriving at the figure of one lakh of rupees or more. It has, however, been added that where the income which escaped assessment in a single assessment year is at least fifty thousand rupees, the assessment for that year can be reopened at any time.

155 (1) (a).

A new provision has been added prescribing a time-limit of four years for the completion of an assessment in the case of a notice under section 28(3) read with 28(1) (c) (penalty for concealment of income etc.).

Existing section 34 (3) Draft clause 160 (1) (b).

It is proposed to allow the Department a period of at least one year for the completion of an assessment in a case where an assessee files a return or revised return under section 22(3).

Existing Section 34 (3) Draft clause 160 (1) (c).

A new provision has been added prescribing a time-limit of four years for the completion of an assessment under section 34(1) (a) (i.e., assessment for income which escaped assessment by reason of the assessee's omission or failure to disclose the material facts). The time-limit will be counted from the end of the financial year in which the notice was issued.

Existing Section 34 (3) Draft Clause 160 (2).

A provision has been added to the effect that while computing the period of limitation laid down by the Act for the completion of assessments, any period during which assessment proceedings were stayed by an order of a court will be excluded.

Existing Section 34 (3) Draft clause 160, Explan. 1

A new provision has been added empowering the revision of the assessment of a member of an association in a case where the assessment of the association itself is revised.

Existing section 35 Draft clause 162 (2).

(Existing Section 35(5) may be compared.)

With reference to the provision that where a re-assessment etc. has to be made in consequence of an order passed on appeal or other proceedings in respect of the assessee or any other person, the time-limit for assessment would not apply, two Explanations have been added explaining the scope of the provision.

Existing Section 34 (3) Draft Clause 160, Explanations 2 and 3.

With reference to the provision that if a company does not pay the tax on its profits within three years after declaring the dividend the tax will be recovered from the

Existing Section 35 (9) Draft Clause 162 (4).

share holders it has been provided that if the assessment of the company itself is delayed a period of at least one year should have elapsed after the end of the year in which the company is assessed

Existing Section 35
Draft Clause 162 (6)

A new provision has been added empowering the Income tax Officer to reopen an assessment for the purpose of allowing bad debts where the assessee claims deduction for a particular previous year but the Income tax Officer is of opinion that the deduction should have been claimed for an earlier previous year (As to the converse case, see under existing section 8)

Existing Section 37
Draft Clause 136 (2)

It has been made clear that while exercising the power of the court with reference to the discovery of documents and examination of witnesses the Income-tax authority should follow the same procedure as a civil court

Existing Section 37
Draft Clause 136 (4)

A new provision for return of documents produced by any person before an Income-tax authority has been added

Existing Section 40 A and 42
Draft Clause 169 etc

The provisions relating to assessment of guardians trustees managers Court of wards Administrator general, agent of a non resident etc have been combined under one topic under the group of sections relating to 'Representative assessee'

Existing Section 40 A and 42
Draft Clause 170 (2)

A new provision has been added limiting the liability of all representative assessee (i.e. guardians trustees agents of non residents etc) to the extent of the assets in their possession (Special remedies available against certain representative assessee have of course been saved)

Existing Section 40 A and 42
Draft Clause 170 (3)

A new provision has been added to the effect that a person liable to be assessed as a representative assessee (i.e. trustees guardians agents of non residents etc) would not be assessed under the general charging section (section 3) in respect of the income concerned

Existing Section 40 A and 42
Draft Clause 171 (1)

A new provision has been added empowering a representative assessee to recover tax paid by him from the person represented by him

Existing Section 40 A and 42
Draft Clause 172

A provision has been made to the effect that a representative assessee who parts with the assets without payment of tax is liable personally

Existing Section 41 (1)
1st proviso.
Draft Clause 174 para graphs (a) and (b)

The provision for mode of computing tax for income received by a Court of wards trustee appointed under a deed in writing Administrator general etc in cases where the income is not specifically receivable on behalf of any one person or by where the individual shares are not known has been altered in two respects —

- (1) regarding income-tax it has been provided that it should be charged as the income of an association of persons or if the income is received by a beneficiary, then at the rate applicable to the beneficiary if the Income tax Officer so directs

- (2) as regards super-tax, it has been provided that it should be charged in all cases as if the income were the income of an association of persons.

A new provision has been added allowing the Income-tax Officer to continue assessment proceedings, started before the dissolution etc. of a firm or association or the discontinuance of its business; against the persons who were partners or members.

Existing
Sec. 44.
Draft Cl.
186 (2) and
196 (2).

With reference to the provisions for charging tax in the case of shipping business, it has been made clear that the rate applicable is one in force for a company which has not made the arrangements for deduction of super-tax on dividends under existing section 18(3D).

Existing
Sec. 44B (3).
Draft Cl.
182 (4).

The provision regarding income arising to a non-resident from a transfer etc. governed by section 44D has been slightly widened. Under the present provision, only income arising from the transfer is taxable under this section. Under the provision as proposed, any income of a non-resident which the transferor has power to enjoy will be covered by this section, (if the power to enjoy itself arises from the transfer).

Existing
Sec. 44D (1).
Draft Cl.
96 (1) (a).

The existing provision, whereunder a sale of securities is disregarded where there is agreement to buy back such securities by the owner of the securities, has been widened by removing the requirement of an agreement to buy those securities. The provision as proposed will be applicable to all cases where the transaction of sale and repurchase of securities results in avoidance of tax. (The provision will not, of course, apply if there was no avoidance or if the avoidance was not systematic).

Existing
Sec. 44E (1).
Draft
Cl. 97 (1).

Under the existing provision, where a person transfers securities before the declaration of the dividend, the income attributable to the period upto the transfer is deemed to be the transferor's income. Under the provision as proposed, however, the income for the whole year will be deemed to be the transferor's income if there is avoidance of tax. It has also been provided that the avoidance need not be of more than ten per cent. of the amount of the income-tax.

Existing
Sec. 44F.
Draft
Cl. 97 (3).

A new provision authorising the Income-tax Officer to extend the time for payment of tax or to allow payment by instalments has been added. Consequential provision for failure to pay instalments etc. has also been added.

Existing
Sec. 45.
Draft Cl.
229 (2) and
(4).

The present provision regarding the imposition of a penalty on an assessee in default has been modified. Penalty has been replaced by penal interest at the rate of 10 per cent. per annum, which will run automatically from the date of default, and no express orders by the Income-tax Officer will be necessary. In consequence existing subsection (A) has been omitted.

Existing
Sec. 46 (1).
and (1A)
Draft
Cl. 230 (1).

Existing
Sec 46 (2)
Draft Cl
231 read
with the second
Schedule

The various modes of recovery which a Collector can adopt when the Income-tax Officer sends a certificate to him have been listed in the draft clause, and detailed procedure to be followed by the Collector is sought to be embodied in the Schedule which will be a self-contained Code. A uniform system will thus be substituted in place of the existing procedure which applies the Revenue law of each State.

Existing
Sec 46 (2)
Draft
Cl 232

It has been made clear that the Income-tax Officer can send a recovery certificate to the Collector within whose jurisdiction the assessee resides or carries on business etc or has property. Further, it has been made clear that the certificate can be sent to the Collector of any district in any part of India.

Existing
Sec 46 (2)
Draft
Cl 233

A provision debarring an assessee from challenging before the Collector the assessment which led to the issue of the recovery certificate has been added. Procedure for withdrawal or correction of the certificate by the Income-tax Officer has been laid down.

Existing
Sec 46 (3)
Draft
Cl 235 (5)

The provision authorising the Income tax Officer to recover tax by any process contained in any municipal law has been narrowed down, by limiting it to only one mode, namely distraint and sale of movable property.

Existing
Sec 46 (3)
Draft Cl
235 (2) second
para
graph

The power of an Income-tax Officer to attach salary is sought to be limited to that portion of the salary which can be attached by a civil court.

Existing
Sec 46
Draft Cl
235 (4)

A new provision has been added empowering the Income tax Officer to apply to any court in which any money of the assessee is lying, for payment of the money to discharge tax due from the assessee.

Existing
Sec 46A
Draft
Cl 241 (4)
and (5)

A new provision has been added requiring the owner of ships or aircraft carrying passengers for destinations beyond India to submit periodically lists of such passengers.

Existing
Sec 48
Draft
Cl 249 (1)

A new provision has been added to the effect that a claim for refund should be made in the prescribed form and verified in the prescribed manner.

Existing
Sec. 48
Draft
Cl 252

A new provision has been added to the effect that if the Income-tax Officer does not dispose of a refund application within three months, the Government shall pay interest at the rate of 2 per cent per annum on the amount that is ultimately found to be refundable.

Existing
Sec. 52
Draft
Cl 256

The provision penalising a person who makes a false statement in a verification is sought to be extended so as to be applicable to verification under any provision of the Act.

Existing
Sec 54 (2)
Draft Cl
141 (3) (c)

A new provision has been added authorising the disclosure by the Income-tax Officer of the substance of the material gathered by him for the purpose of a "best judgment" assessment.

A new provision authorising the disclosure by an Income-tax Officer of accounts of assessee which are lying with him and are required by a court, has been added. Similarly, a provision allowing the disclosure of registered documents of which copies can be obtained under the Registration Act, or of documents like balance sheet, audit report etc. prepared under the Companies Act, has been added.

Existing
Sec. 54 (2).
Draft Cl.
141 (3) (f).

A new provision authorising the disclosure of information required in connection with levy or realization of other Central taxes (for example Wealth Tax, Estate Duty Tax etc.) has been added.

Existing
Sec. 54 (2).
Draft Cl.
141 (3) (n).

It has been made clear that the privilege conferred by existing section 54 can be waived by the assessee.

Existing
Sec. 54.
Draft
Cl. 142.

With reference to the exemption in respect of super-tax on dividends received from an Indian company engaged in certain industries, the conditions to be satisfied by the Indian Company paying the dividend have been set out *in extenso*, unlike the existing section which merely makes a cryptic reference to section 15C.

Existing
Sec. 56A.
Draft
Cl. 108.

A new provision has been added authorising the Commissioner to relax the conditions for the recognition of a provident fund, in the case of provident funds established under the Employees' Provident Funds Act, 1952 and exempted from the operation of the scheme under section 17 of that Act.

Existing
Sec. 58B (1).
Draft
Cl. 289 (1)
Provi. (a).

A new provision allowing the deduction of contributions paid by an employer towards a recognised provident fund has been added.

Existing
Sec. 58A to
58K.
Draft Cl. 293

It has been made clear that an approved super-annuation fund should satisfy not only the conditions set out in the Act, but also the conditions to be imposed by rules made by the Central Government.

Existing
Sec. 58N to
58-V.
Draft Cl. 307
(1).

A new provision has been added to the effect that where there is a repugnancy between the rules of an approved superannuation fund and any provision of the Act, the latter shall prevail.

Existing
Sec. 58N to
58-V Draft
Cl. 307 (3).

It has been made clear that the provision for deduction of income-tax on contributions repaid to an employee from an approved superannuation fund applies not only to the employee's contributions but also to the employer's contributions. It has also been made clear that payment of contributions to an employee on death or termination of employment does not come within the scope of this section.

Existing
Sec. 58S (1)
Draft
Cl. 312.

A new provision has been added laying down elaborately the power of the Central Government to make rules in relation to approved superannuation funds.

Existing
Sec. 58N to
58-V.
Draft Cl. 317

Existing Sec 59 Draft Cl 329 (2) A new provision has been added authorising the Central Board of Revenue to make rules relating to —

- (i) registration of income-tax practitioners who are not lawyers or accountants,
- (ii) constitution of an authority to take disciplinary action against such income tax practitioners,
- (iii) issue of income-tax verification certificates

Existing Sec 60 (1) and 60 (3) (omitted in the draft) Provisions relating to exemptions for tax etc to be granted by notification by the Central Government are proposed to be deleted as obsolete

Existing Sec 60 (2) Draft Cl 90 The power to grant relief in cases where salary is paid in arrears or in advance etc, which is at present confined to salary or profit in lieu of salary, has been extended to perquisites also

Existing Sec 61 (2) (ii) Draft Cl 324 (2) (ii) The right of any lawyer to appear before an Income-tax authority is sought to be confined to legal practitioners entitled to appear in a civil court (Persons actually in practice at present will not be affected)

Existing Sec 61 (2) (ii) (vi) Draft Cl 324 (2) Explain and 324 (2) (v) It is proposed to exclude persons who are not Chartered Accountants or authorised to audit the accounts of companies under section 226(2) of the Companies Act, 1956, from the category of "accountants" entitled to appear before an Income-tax authority (Persons actually in practice at present will not be affected)

The category "Income-tax practitioner" is to be abolished for the future, except as regards persons already in practice

Existing Sec 61 (3) Draft Cl 324 (4) The power to take disciplinary action against income-tax practitioners other than lawyers and accountants which is vested in the Commissioner at present is proposed to be transferred to an authority whose constitution would be laid down in the rules

Existing (Reference Sec 66 provisions omitted in the draft) Consequent on the proposed abolition of the Appellate Tribunal provisions relating to references to the High Court have been omitted

Existing Schedule rule 6 Draft Schedule, rule 5(a) With regard to the assessment of persons carrying on general insurance business it has been made clear that deductions for depreciation must be allowed as entered in the accounts prepared under the Insurance Act, and cannot be questioned by the Income-tax Officer

(New) Draft Cl 70 Unexplained cash credits, appearing in the books of accounts of the assessee, have been made assessable as his income

(New) Draft Cl 71 Investments not appearing in the books of the assessee and not explained satisfactorily have been made assessable for the financial year in which the investments were made

A new provision has been added laying down the position regarding liability of an executor to pay tax in respect of the income accruing after the death of the person whose estate is being administered. (New) Draft Cl. 178.

It has been made clear that in cases where tax is deductible at source or payable in advance, some kind of "charge" of tax is implied. (New) Draft Cl. 199.

Power has been conferred on the Supreme Court to make rules regulating the procedure to be followed by the High Court in disposing of appeals under the Act. (New) Draft Cl. 277.

A new provision has been added providing that income once charged to tax shall not be charged to tax again in the hands of the same person. (New) Draft Cl. 319.

A new provision for the service of notices after the partition of a Hindu family has been added. (New) Draft Cl. 321 (1).

A new provision has been added requiring every Income-tax authority to endorse documents placed on the file and to refer to the documents in any order which is based on the document. (New) Draft Cl. 323.

LIST II

Changes recommended in the Income-tax Act but not embodied in Appendix I

Besides the changes already embodied in the draft proposals in Appendix I, the following changes are recommended in the Act, (These have not been embodied in the draft proposals in Appendix I)

The reasons in support of these changes have been stated below, or, in the body of the report or the notes to the relevant draft clauses —

Existing Section 4 (1) (b)
(iii)

- (1) The provisions for taxing the income of a resident which accrued outside India in past years and is brought into India in the accounting year, should be deleted¹

Existing Sections 4 (1) and Prov 4B s 42 (2) and s 44 D

- (2) The category "not ordinarily resident" may be totally deleted²

If the provisions relating to persons not ordinarily resident are retained some clarification of the existing definition is necessary, so as to settle the conflict of decisions mentioned in the body of the report³

Existing Section 4 (1)
Expl 4

- (3) The provision relating to income which accrued in a Part B State or a merged territory before the extension of the Income-tax Act thereto and which is brought into any other part of India thereafter, should be omitted, as obsolete⁴

Existing Section 4 (3) (i)

- (4) The existing words 'subject to the provisions of clause (c) of sub-section (1) of section 16 contained in existing section 4(3) (i), opening line, should be deleted⁵

Existing Section 5 (8)

- (5) Whether the provision authorising the Director of Inspection, the Commissioner etc to issue instructions to subordinate officers should be retained, may be considered⁶

Existing Section 7 (1), 1st Prov

- (6) The limit of one-fifth of the salary laid down at present in respect of rebate for sums deducted from salary for deferred annuities etc should be raised to one-fourth on the lines of section 15(3) as amended by the Finance (No 2) Act 1957⁷

¹ Vide para 22 of the body of this Report, this relates to draft clause 4 (1) (d)

² Vide para 22 of the body of this Report and para (1) of notes to draft clause 6 and also para (3) of notes to draft clause 4

³ See para 22 of the body of this Report

⁴ Vide para 22 of the body of this Report and notes to draft clause 4, para (11) second sub-paragraph

⁵ Vide notes to draft clause 12, para 9 (h)

⁶ Vide the second para. of notes to draft clause 130

⁷ Vide the second paragraph of the notes to draft clause 88 (1) (c)

(7) In existing section 7(2) (iii), the words "wholly, necessarily and exclusively in the performance of his duties" may be replaced by suitable words connoting expenses *reasonably* incurred in the performance of duties'. Existing Section 7(2) (iii).

(8) The deduction of one-half of the taxes levied by a local authority is at present allowed only in respect of property occupied by a tenant. No such deduction is allowed where the property is occupied by the owner himself. There is, however, no reason why this deduction should not be available in the case of property occupied by the owner. There is no apparent justification for making a distinction between the two classes of properties'. Existing Section 9 (2)-3rd Prov.

(9) Certain special statutes lay down the rates of depreciation for undertakings governed by those statutes. It has been suggested that the rates of depreciation allowed by such statutes for the purposes of those statutes should be made applicable for purposes of income-tax also, in relation to those undertakings. If the same rates are adopted, the assessee owning such undertakings would be saved a lot of trouble and duplication of labour. Existing Section 10 (2) (vi).

This question requires consideration by the Government¹.

(10) Where machinery, plant or furniture is let on hire and the income from hire is assessed under head "Income from other sources", the Act allows the assessee certain deductions on the lines of income from business. The list of deductions so allowed, as given in existing sections 12 (3) and 12(4), does not mention the deductions referred to in existing sections 10(2) (via) and 10(2) (vib) i.e., the additional depreciation allowed for new building, machinery etc., and the development rebate allowed for new machinery etc. These should be added in sections 12(3) and 12(4) as they stand on the same footing as normal depreciation'. Existing Section 12 (3) and 12 (4).

(11) The question of making a provision for the spread-over of income in the case of patents on the lines of existing section 12AA should be considered'. Existing Section 12 AA.

(12) The method of calculating the cost of acquisition of an asset in the case of capital gains, may be simplified by substituting the fair market value or the actual cost, in place of the present complicated provisions'. Existing Section 12 B (2) and 12 B (3).

(13) The Income-tax Officer (or, preferably, the Inspecting Assistant Commissioner) should issue a certificate to an institution qualifying under existing section 15B, so Existing Section 15 B.

¹ Vide notes to draft clause 16 (iv), in paragraph 6 of the notes to draft clauses 15 to 17.

² This relates to draft clause 24 (1) (i).

³ This relates to draft clause 32 (1) (i) and (ii).

⁴ This relates to draft clause 60 (ii).

⁵ Vide notes to draft clause 187, last para.

⁶ Vide notes to draft clause 51.

that assessee making donations to such institution need not prove in each individual case that the institution falls within the section¹

Existing Section 16 (2) (14) The provision for grossing up of dividends should be simplified

The question of requiring companies to deduct tax from dividends may be considered²

Existing Section 16 (2) (15) Regarding grossing up of dividends, it is further recommended that where a dividend is declared out of profits taxed in earlier years, and there are no taxable profits of the company in the year of declaration of the dividend, the grossing up should be allowed at the rate which would have been applicable to the company in the year of declaration if the company had got any taxable income. This would clarify the position³

Existing Section 16 (3) (16) Under existing section 16(3) the income arising to a wife from her membership of a firm in which her husband is a partner is included in the total income of the husband. In modern times however, a large number of partnerships have come into existence in which the wife contributes substantial capital or renders active assistance by virtue of her professional qualifications. It is recommended that the provision in question should not apply to professional partnerships in such cases (The case of a wife working in partnership with her husband as a doctor or lawyer may be cited as a typical example)

It may be noted that the provision in question was enacted at a time when women had no resources of their own and had not joined the learned professions. With the changes in economic and social conditions that have taken place in modern times the provision must be modified. This will also be in accordance with the spirit of article 15 of the Constitution since it will place husbands and wives on an equal footing⁴

Existing Sections 17 (6) and 17 (7) (17) Capital gains should be completely excluded from the total income of the assessee for the purposes of super tax⁵

Existing Section 18A (5) and its 2nd proviso (18) The correct construction of existing section 18A (5) and its second Proviso should be examined with reference to the alternative draft given in the notes⁶

¹ Vide the last paragraph of notes to draft clause 89

² Vide para. 40 of the body of this Report and also notes to draft clause 59(2)

³ Vide notes to draft clause 59 (2)

⁴ This relates to draft clause 59 (2)

⁵ This relates to draft clause 67 ()

⁶ Vide notes to draft clause 125 last para

⁷ Vide notes to draft clause 222 (1)

(19) A separate form of return should be prescribed for losses incurred by an assessee, which the assessee wishes to carry forward¹. Existing Section 22 (2A).

(20) The existing provision regarding assessment of registered firms, resulting in double taxation of the same income to some extent, should be deleted². Existing Section 23 (5) (1).

The provisions for registration of firms should not be administered in a hyper technical manner³.

(21) The present anomalous position regarding assessment of companies in respect of distributed and undistributed profits should be removed. The anomaly arises from the fact that existing section 23A of the Income-tax Act encourages the maximum distribution of profits, while the provision in the Finance Act aims at the minimum distribution of profits⁴. Existing Section 23 A.

(22) It is further recommended that a provision should be added to the effect that in passing an order under existing Section 23A(1), the Income-tax Officers should also take into account the current business requirements of the company. He should not pass an order under the section if he is satisfied that having regard to current business requirements, the declaration of a larger dividend would have been unreasonable⁵. Existing Section 23A. (1)

(23) An assessee should, along with his return of income, pay tax on the basis of his return. An order of provisional assessment by the Income-tax Officer should not be necessary. Such a system of voluntary payment of tax by the assessee will save considerable time of the Department⁶. Existing Section 23 B (1).

(24) It should be considered whether it is necessary to retain the concessions allowed by existing sections 25(3) and 25(4), relating to discontinuance of or succession to a business assessed under the 1918 Act. The lapse of time since the 1918 Act would seem to render this provision unnecessary⁷. Existing Sections 25 (3) and 25 (4).

¹ This relates to draft clause 143 (3).

² Vide para 65 of the body of this Report and notes to draft clause 189 (3).

³ Vide para 65 of the body of this Report. This relates mainly to draft clauses 189 and 190.

⁴ Vide the last three paragraphs of the notes to draft clause 113.

⁵ Vide para. 54 of the body of this Report. This relates to draft clause 113 (2).

⁶ This relates to draft clause 145.

⁷ Vide the last paragraph of notes to clause 91.

Existing Section 31

(25) Appeals against assessments of income-tax in excess of rupees one lakh should be heard by the Commissioner and not by the Appellate Assistant Commissioner as at present' Other appeals should be heard by senior officers whose scale of pay is attractive'.

Existing Section 34 (1), 1st proviso (ii)

(26) It is recommended that a notice under section 34 should not be issued in any case after the expiry of sixteen years from the end of the assessment year in which the income was first assessable'.

Existing Section 40 (1)

(27) Existing section 40(1) should not make a mention of trustees It should be confined to guardians of minors and committees and managers of lunatics and idiots'

M C SETALVAD,
(Chairman)

M C CHAGLA,
K N WANCHOO,
P SATYANARAYANA RAO,
N C SEN GUPTA,*
V K. T. CHARI,*
D NARASA RAJU,*
S M SIKRI,*
G S PATHAK *
G N JOSHI,
N A PALKHIVALA

K SRINIVASAN
DURGA DAS BASU,
Joint Secretaries

NEW DELHI,

The 26th September, 1958

*Bes des Dr Sen Gupta and Shri Narasa Rau and Pathak, who are mentioned in the forwarding letter, Shri Chari and Shri Sikri have also authorised the Chairman to sign the report on their behalf

¹ See paragraph 102 above

² Vide para 62 (7) above

³ Vide notes to draft clause 169 (1) (ii)

⁴ Dr Sen Gupta has signed the report, subject to the Note appended at the end

INDEX

Clause	Subject matter	Existing section
--------	----------------	------------------

CHAPTER I

PRELIMINARY

- | | | |
|----|--|--------|
| 1. | Short title, extent and commencement | Sec. 1 |
| 2. | Definitions | Sec. 2 |

CHAPTER II

BASIS OF CHARGE

- | | | |
|-----|---|--|
| 3. | Charge of Income-tax | Sec. 3 |
| 4. | Scope of total income | Sec. 4 |
| 5. | Previous year | Sec. 2(11) |
| 6. | Residence in India | Secs. 4A & 4B |
| 7. | Income deemed to be received | New |
| 8. | Dividend Income | Sec. 16(2), part |
| 9. | Income deemed to accrue or arise in India | Secs. 42(1), 42(3) & Sec. 4(1), 2nd & 3rd Expls. |
| 10. | Remittance by a non-resident husband | Sec. 4(2) |

CHAPTER III

INCOMES WHICH DO NOT FORM PART OF THE TOTAL INCOME

- | | | |
|-----|---|--|
| 11. | Agricultural income, Income received as members of Hindu Undivided family, Casual receipts, etc. | Sec. 4(1), 2nd to 5th provisos.
Sec. 4(3)(ii) to (xxii)
Sec. 7(1), proviso
Sec. 7(1), Explanation 2, prov.
Sec. 14(1) and New. |
| 12. | Income from property held for religious or charitable purposes, and income of religious or charitable institutions. | Sec. 4 (3) (i), (ii) and concluding part. |
| 13. | Business assessed under the Income-tax Act, 1918 | Sec. 25(3),(4) part, |

CHAPTER IV

COMPUTATION OF TOTAL INCOME

Heads of income

- | | | |
|-----|---------------------------|--------|
| 14. | Heads of income | Sec. 6 |
|-----|---------------------------|--------|

A. Salaries

- | | | |
|-----|--------------------------|-----------------------------------|
| 15. | Salaries | Sec. 7 (1) part |
| 16. | Deductions | Sec. 7 (2) |
| 17. | Interpretation | Sec. 7 (1) part. and Expls. 1 & 2 |

Cl use	Subject matter	Taxing section
	<i>B Interest on Securities</i>	
18	Interest on Securities	Sec 8 (1) main part and New
19	Deductions	Sec 8 1st proviso part
20	Banking Company	Sec 8 Expl
21	Amounts not deductible	Sec 8 1st proviso part.
	<i>C Income from house property</i>	
22	Income from house property	Sec 9(1)
23	Annual value	Sec 9(2) part & New
24	Deductions	9(2) part & Sec 9(1) part
25	Amounts not deductible	Sec 9(1) (v) proviso
26	Property owned by co-owners	Sec 9(3)
27	Interpretation	Sec 9(4) Sec 9(1) (vi) Expl & New
	<i>D Profits and gains of business profession or vocation</i>	
28	Profits and gains of business profession or vocation	Sec 10(1) and Sec 10 (5A) part Sec 10(6) New and Sec 24(1) Expl
29	Provisions applicable	New
30	Repairs and insurance for buildings	Sec 10(2) (i) and (j) (v) (v) & (x) parts
31	Repairs and insurance of machinery plant and furniture	Sec. 10(2) (v) and (v) parts
32	Depreciation	Sec 10(2) (v) (v a) & (v) parts
33	Development rebate	Sec. 10(2) (v b) part
34	Conditions for depreciation allowance and development rebate	Sec 10(2) (v) (v ia) and (v b) parts sec. 10 (4B) and New
35	Expenditure on Scientific research.	Sec 10(2) (x) (xi) and (x v)
36	Other deductions	Sec 10 (2) () (v) part (v) (x) and (x) & New
37	General	Sec 10 (2) (xv)
38	Buildings etc partly used for business etc or not exclusively so used	Secs 10 (2) () prov 10 (2) () prov 10 (2) latter part and 10(3)
39	Managing agency	Sec 12A
40	Amounts not deductible	Secs 10(2) (i) part 10 (4) 10(4A) and Sec 8 Exp part
41	Profits chargeable to tax	Secs 10(2) (v) part, 10 (2) (x v) part 10 (2) (x) prov part 10 (2A)
42	Interpretation	Secs 10 (5) 10 (2) (xv) Sec 12B (1) 2nd prov part Sec 24 (1) Expl 2 and New
43	Residence of employees	New

Clause	Subject matter	Existing section
<i>Insurance business</i>		
44.	Insurance business.	Sec. 10 (7) and Sch. rule 9

E. Capital Gains

45.	Capital gains	Sec. 12B (1) part.
46.	Previous year	Sec. 12B (1) part.
47.	Transactions not regarded as sale etc.	Sec. 12B (1), 1st prov. part.
48.	Mode of Computation and deductions	Sec. 12B (2) part.
49.	Statutory cost with reference to modes of acquisition .	New.
50.	Determination of statutory cost in the case of non-depreciable assets.	Secs. 12B (2) part and 12B (3) part.
51.	Determination of statutory cost in the case of depreciable assets.	Secs. 12B (2) part and 12B (3) part.
52.	Option money received	Sec. 12B (2) 4th prov.
53.	Consideration for exchange	New.
54.	Consideration for sale etc. how determined in case of understatement.	Sec. 12B (2) 1st prov.
55.	Capital gains exempt from tax	Sec. 12B (4) (a)
56.	Profit on sale of property used for residence	Sec. 12B (4) (b)
57.	Interpretation	New and Sec. 12B (2) (ii) part.

F. Income from other sources

58.	Income from other sources	Sec. 12 (1) (1A) and New
59.	Grossing up of dividends	Sec. 16 (2) part
60.	Deductions	Sec. 12 (2) part
61.	Amounts not deductible	Sec. 12 (2) prov. and 12 (5) part.
62.	Profits chargeable to tax.	Sec. 12 (5) part, 12 (3) and (4)

CHAPTER V

INCOMES OF OTHER PERSONS INCLUDED IN ASSESSEE'S TOTAL INCOME

63.	Transfer of incomes.	Sec. 16 (1) (c) part
64.	Revocable Transfer of property.	Sec. 16 (1) (c) part
65.	Irrevocable Transfers	Sec. 16 (1) (c) part
66.	Definition of revocable transfer.	Sec. 16 (1) (c) part
67.	Husband, wife and minor children	Sec. 16 (3)

CHAPTER VI

AGGREGATION OF INCOME AND SET OFF OR CARRY FORWARD OF LOSSES

68.	Total income	Sec. 16 (1) (a) part
69.	Method of computing a partner's share in the income of the firm.	Sec. 16 (1) (b)
70.	Cash credits	New.
71.	Un-explained investments.	New.

Clause	Subject matter	Existing Section
72	Set off of loss from one business to loss from another	New.
73	(1) Set off of losses from one head to another . . .	Sec 24 (1) part
	(2) Carry forward & set off of business losses . . .	Sec 24 (2) part
74	Losses in speculative business . . .	Secs 24 (1) part, 24 (2) part.
75	Losses under the head 'capital gains' . . .	Sec. 24 (2A) & (2B)
76	Losses of registered firms . . .	Sec. 24(1) part & (2) part
77	Losses of unregistered firms assessed as registered firms	Sec 24(2) part
78	Losses sustained by partners of unregistered firms	Secs 24(1) part, 24(2) part
79	Set off of losses in case of change in constitution of firm	Sec 24 (2) part
80	Submission of return of losses . . .	Sec. 22 (2A) part

CHAPTER VII

INCOME ON WHICH NO INCOME-TAX IS PAYABLE

81	Earned income	Sec 15A.
82	Co-operative Society	Sec 14(3)
83	Dividends from Co-operative Society	Sec. 14(4)
84	Marketing Society	Sec 14(5)
85	Newly established industrial undertakings	Sec 15C part
86	Dividend from new industrial undertaking	Sec 15C (4)
87	Other income	Sec 8, 2nd and 3rd provisions Sec 14 (2) (a), Sec 14 (2) (aa) and Sec 14 (2) (b)

CHAPTER VIII

REBATES AND RELIEFS

88	Rebate on life insurance premia, annuities and contribution to provident Fund etc	Sec. 15
89	Donations for charitable purposes	Sec 15B part

Reliefs for Income tax

90	Salary paid for more than one year	Sec. 60 (2) part
91	Business assessed under the Income tax Act, 1918	Sec 25 (3) & (4) parts

CHAPTER IX

DOUBLE TAXATION RELIEF

92	Agreement with countries	Sec 49A
93	Countries with which no agreement exists	Sec 49D
94	Relief to company to be regarded as shareholder	Sec 49C

CHAPTER X

PROVISIONS AGAINST AVOIDANCE OF TAX

95	Certain transactions with non residents	Sec 42(2)
96	Avoidance of income tax by transactions resulting in transfer of income to non-residents	Sec 44D
97	Avoidance of tax by certain transactions in securities	Secs 44E and 44F

Clause	Subject matter	Existing section
--------	----------------	------------------

CHAPTER XI

SUPER-TAX

Principal Provisions

98.	Charge of Super-tax	Sec. 55 part
99.	Total income from Super tax	Sec. 56.
100.	Business, Profession or vocation charged under 1918 Act	Sec. 25(4) prov.
101.	Deductions under interest on securities	New
102.	Applicability of provisions to super-tax	Sec. 58 (1)
103.	Avoidance of super-tax	New.

Incomes which do not form part of total income for super-tax

104.	Share in unregistered firm or association of persons	Sec. 55, 2nd prov.
105.	Co-operative Society	Sec. 14 (3) part.
106.	Dividends from co-operative Society	Sec. 14(4) part
107.	Marketing Society	Sec. 15 (5) part
108.	Dividends from certain companies	Sec. 56A.

Rebate of Super-Tax

109.	Donations for charitable purposes	Sec. 15B part.
110.	Newly established industrial undertakings	Sec. 15C part and Sec. 17(3) part.
111.	Share from registered firm.	Sec. 14(2)(aa), part
112.	Relief for salary received in arrear etc.	Sec. 60(2) part

Additional Super-Tax on undistributed Profits

113.	Super-tax on undistributed income of certain companies	Sec. 23A(1)
114.	Special provisions for certain companies	Sec. 23A(2)
115.	Approval of Inspecting Assistant Commissioner	Sec. 23A(8)
116.	Saving for company in which public are interested	Sec. 23A(9)
117.	Company in which the public are substantially interested	Sec. 23A Expl. 1.
118.	Distributable Income	Sec. 23A(1) part.
119.	Investment Company	New
120.	Statutory percentage	Sec. 23A, Expl. 2.

CHAPTER XII

DETERMINATION OF TAX IN CERTAIN SPECIAL CASES

121.	Determination of Income-tax	Sec. 17(2) part.
122.	Tax on accumulated balance of Recognised Provident Fund	New.
123.	Tax on compensation.	Sec. 10(5A) part and New.
124.	Tax in the case of non-residents	Sec. 17(1).
125.	Tax on capital gains in cases of assesseees other than companies	Sec. 17(6).
126.	Tax on capital gains in case of companies	Sec. 17(7).

Clause Subject matter Existing section

CHAPTER XIII INCOME-TAX AUTHORITIES

Appointment and Control

127	Income-tax Authorities	Sec 5(1)
128	Appointment of Income-tax Authorities	Sec. 5 part
129	Control of Income-tax Authorities	Sec 5 part
130	Instructions to subordinate Authorities	Sec. 5 part.
131	Jurisdiction of Income-tax Authorities	Sec 5 part
132	Transfer of case from one income-tax officer to another	Sec 5(7A) & New
133	Change of Incumbent of an office	Sec 5(7C)
134	Authority competent to take over control of certain proceedings	New
135	Income-tax officer entitled to assets	Sec 64

Powers

136	Power regarding discovery production of evidence etc	Sec. 37 part
137	Power of search and seizure	Sec 37 part
138	Power to call for information	Sec 38
139	Power to inspect registers of companies	Sec. 39
140	Powers of Directors of Inspection and inspecting Assistant Commissioners	Sec. 5(7B) part

Disclosure of Information

141	Disclosure of information prohibited	Sec 54
142	Savings regarding voluntary disclosure by persons making the statement etc.	New

CHAPTER XIV PROCEDURE FOR ASSESSMENT

143	Return of income	Sec 22(1) (2) (2A) part (3) & (5)
144	Return by whom to be signed	New
145	Provisional assessment	Sec 23B part
146	Enquiry before assessment	Sec 22(4) & New
147	Assessment	Sec 23(1) (2) and (3)
148	Best judgment assessment	Sec 23(4) part
149	Relevant material	New
150	Method of accounting	Sec 13
151	Reopening of assessment after completion of the assessment	Sec 27
152	Income escaping assessment	Sec 34(1) part
153	Income which has escaped assessment	Sec 34 (2) part
154	Issue of notice where income has escaped assessment	Sec 34 (1) part
155	Time limit for issue of notice	Sec 34 (1) part (3) part
156	Provisions for cases where notice of assessment is issued after appeal etc	Sec 34 (3) part
157	Sanction for issue of notice	Sec 34 (1) part
158	Other provisions	Sec 34 (1) part 34 (2)
159	Savings regarding time limit for completion	New
160	Time limit for completion of assessment and reassessment	Sec 34 (3)

Clause	Subject matter	Existing section
161.	Rectification of mistake.	Sec. 35 (1) (2) (3) & (4).
162.	Other amendments	Sec. 35 (5), (8) & (9).
163.	Notice of demand	Sec. 29.
164.	Intimation of loss	Sec. 24 (3).
165.	Intimation of assessment of firm	Sec. 23 (6).
166.	Information and Return.	Secs. 20A, 21, 19A and Sec. 58 F.
167.	Certificate by company to share holders receiving dividends.	Sec. 20.

CHAPTER XV

LIABILITY IN SPECIAL CASES

A. Legal Representatives

168.	Legal representatives	Sec. 24B.
------	---------------------------------	-----------

B. Representative assessee—General provisions

169.	Representative assessee	Sec. 42 (1), 40 (1), 41(1).
170.	Liability of representative assessee	Secs. 40 part 41 part and New.
171.	Right of representative assessee to recover tax paid	New and Sec. 42(1) part.
172.	When representative assessee personally liable.	New.

C. Representative assessee—special cases

173.	Who may be regarded as agent	Sec. 43.
174.	Charge of tax where shares of beneficiaries unknown	Sec. 41 (1), 1st prov.
175.	Case where part of trust income is chargeable	Sec. 41 (1), 2nd prov.

D. Representative assessee—General

176.	Remedies against Property in cases of representative assessee.	New.
177.	Direct assessment not barred.	Sec. 41 (2) and Sec. 42(1), part.

E. Executors

178.	Executors.	New.
179.	Right of executor to recover tax paid.	New.

F. Succession to business, profession or vocation.

180.	Succession to business.	Sec. 26 (2).
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G. Partition

181.	Assessment after partition of a Hindu undivided family.	Sec. 25A and New.
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H. Shipping business of non-residents

182.	Shipping business of non-residents.	Secs. 44A, 44B and 44C.
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I. Recovery of tax in respect of non-residents

183.	Recovery of tax in respect of non-resident from his assets	Sec. 42 (1), 1st Prov.
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J. Persons leaving India

184.	Assessment of person leaving India.	Sec. 24A.
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K. Discontinuance of business or dissolution

185.	Discontinued business.	Sec. 25 (1).
186.	Dissolved association of persons.	Sec. 44 part.

L. Special provisions for certain kinds of income

187.	Royalties or copyright fees for literary or artistic work and fees for patents.	Sec. 12AA.
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M. Liability of State Governments

188.	Interest on income-tax free securities of a State Government	Sec. 8, 3rd prov.
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Clause	Subject matter	Existing section
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CHAPTER XVI

SPECIAL PROVISIONS APPLICABLE TO FIRMS

Assessment

189	Assessment of registered firms	Sec 23 (5) (a)
190	Assessment of unregistered firms	Sec 23 (5) (b).

Registration

191	Application for registration	Sec 26A part
192	Procedure on receipt of application	Sec 26A (2) part Sec. 23 (4) part, and New.
193	Cancellation of registration	New and Sec. 23 (4) part

Changes in constitution, Succession and dissolution

194	Change in constitution of a firm	Sec 26 (1)
195	Succession of one firm by another firm	New.
196	Firm dissolved or business discontinued	Sec. 44 part

Other provisions

197	Other provisions	New
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CHAPTER XVII

SPECIAL PROVISION RELATING TO COMPANIES

198	List of provisions applicable to companies	New
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CHAPTER XVIII

COLLECTION AND RECOVERY OF TAX

A—General

199	Deduction at source and advance payment	New
200	Direct payment	Sec 19

B—Deduction at source

201	Salary	Sec 18 (2), (2A) & (2B)
202	Interest on Securities	Sec 18 (3) part, (3A) part.
203	Dividends	Sec 18 (3D) part
204	Other sums	Sec 18 (3B), (3C) parts
205	Certificate for deduction at lower rate	Sec. 18 (3), (3A), (3B) (3C), (3D), parts
206	Tax deducted is income received	Sec 18(4)
207	Credit for Tax deducted	Sec 18(5) part.
208	Duty of person deducting tax	Sec. 18(6)
209	Consequences of failure to deduct or pay	Sec 18(7)
210	Deduction only one mode of recovery	Sec. 18(8).
211	Certificate for tax deducted	Sec 18(9)
212	Persons responsible for paying	Sec 18, Expl
213	Bar against direct demand on assessee	Sec. 7(1), 2nd prov
214	Saving regarding tax deemed to have been paid on dividends	New

Clause	Subject matter	Existing section
<i>C—Advance payment of tax</i>		
215.	Advance tax and income subject to advance tax	Sec. 18A (1) (a) part.
216.	Condition of liability to pay advance tax	Sec. 18A(1) (a) part.
217.	Computation of advance tax	Sec. 18A (1) (a) part and New.
218.	Order by Income-tax Officer	Sec. 18A(1) (a) part
219.	Instalments of advance tax	Sec. 18A(1) (a) part and (1)(b).
220.	Estimate by assessee	Sec. 18A(2) & (3)
221.	Commission receipts	Section 18A(4)
222.	Interest payable by Government	Sec. 18A (5) part
223.	Interest payable by assessee	Sec. 18A (6)
224.	Interest payable by assessee in cases of underestimate etc.	Sec. 18A (7)
225.	Interest where no estimate made	Sec. 18A (8)
226.	When assessee deemed to be in default	Sec. 18A (10)
227.	Credit for advance tax	Sec. 18A (11)
228.	Exclusion of capital gains	Sec. 18A (12).

D—Collection and Recovery

229.	When tax payable and when assessee deemed in default	Sec. 45.
230.	Interest payable when tax in default	Sec. 46(1).
231.	Certificate to Collector	Sec. 46 (2) & 46 (7) Expl. part.
232.	Collector to whom certificate is to be issued.	New.
233.	Validity of certificate and amendment thereof	New.
234.	Amendment, cancellation or withdrawal of certificate	New.
235.	Other modes of recovery	Sec. 46 (7) Expl. part Sec. 46 (5), (5A), (3), (4)
236.	Recovery through State Government	Sec. 46 (6).
237.	Recovery through Collector in Pakistan	Sec. 46 (8)
238.	Recovery of Pakistan tax	Sec. 46 (9)
239.	Condition for recovery of Indian tax in Pakistan or of P.kistan tax in India	Sec. 46 (10)
240.	Recovery of Penalties	Sec. 47.
241.	Tax Clearance Certificate	Sec. 46 A.
242.	Period for commencing recovery proceedings	Sec. 46 (7).
243.	Recovery by suit or under other law	Sec. 46 (7) Expl. part.

E—Tax payable under provisional assessment

244.	Recovery of tax payable under provisional assessment	Sec. 23 B (5).
245.	Tax paid by deduction or advance payment	Sec. 23 B (6).

CHAPTER XIX

TAX DEEMED TO HAVE BEEN PAID ON DIVIDENDS

246.	Tax deemed to have been paid on dividends	Secs. 18 (5) part and 49 B
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CHAPTER XX

REFUNDS

247.	Refunds	Sec. 48 (1)
248.	Person entitled to claim refund in certain special cases	Sec. 49 F.

Cause	Subject matter	Existing section
249	Form of claim for refund and limitation.	New
250	Refund on appeal etc.	Sec. 48 (2)
251	Correctness of assessment not to be questioned	Sec. 48 (4)
252	Interest	New
253	Set-off of refunds against tax remaining payable	Sec. 49 E.

CHAPTER XXI

APPEALS AND REVISIONS

A—Appeals to the Appellate Assistant Commissioner

254	Appealable orders	Sec. 30 (1) part
255	Appeal by partner	Sec. 30 (1) and prov
256	Appeal by person denying liability to deduct tax	Sec. 30 (1A)
257	Form of appeal and limitation	Sec. 30 (3) 30 (2) part
258	Procedure on appeal	Sec. 30 (1) part 31 (2) 31 (2A) 31 (3) 2nd prov 31 (5) and New
259	Powers of the Assistant Appellate Commissioner	Sec. 31 (3) part & New

B—Appeals to High Court

260	Appealable orders	Sec. 33 (1) part 33 (2) part 33 B (3B) part & New
261	Limitation	Sec. 33 (1) part 33 (2) part 33 B (3) part 33 (2A) and 66 (7A)
262	Form of appeal	Sec. 33 (3) and 33 B (4) part
263	Powers and Procedure	Sec. 66 (5) part
264	Hearing by Bench	Sec. 66A (1) part
265	Communication of order in appeal	Sec. 66 (5) part
266	Costs	Sec. 66 (6)
267	Refund consequential on appeal	Sec. 66 (7) prov and New

C—Appeals to Supreme Court

268	Appealable Judgment	Sec. 66A (2)
269	Procedure	Sec. 66A (3) part New and 66A (4)

D—Appeals to the Central Board of Revenue

270	Appeals to the Central Board of Revenue	New
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E—Revision by Commissioner

271	Revision of order prejudicial to Revenue	Sec. 33 B (1) & 33 B (2)
272	Revision of other orders	Sec. 33 A (1) part Sec. 33A(2) part, Sec. 33A(3)

F—General

273	Tax to be paid notwithstanding appeal	Sec. 66(7) part & 66A(3) 1st prov part.
274	Execution for costs awarded by Supreme Court	Sec. 66 A (3) 2nd prov
275	Amendment of assessment on appeal	Sec. 31 (4) & 33 (5) modified

Clause	Subject matter	Existing section
276.	Exclusion of time taken for copy	Sec. 67A.
277.	Rules by the Supreme Court	New.
278.	Definitions	Sec. 66 (8) & New.

CHAPTER XXII

PENALTIES IMPOSABLE BY INCOME-TAX AUTHORITIES

279.	Failure to furnish information regarding securities etc.	Sec. 44 E (6) part
280.	Concealment of income or improper distribution of profits	Sec. 28 (1), (2).
281.	Failure to give notice of discontinuance	Sec. 25 (2) part
282.	False estimate of or failure to pay advance tax	Sec. 18 A (9).
283.	Procedure	Sec. 28 (3), (6) and (5)
284.	Bar against prosecution	Sec. 28 (4).

CHAPTER XXIII

OFFENCES AND PROSECUTIONS

285.	Failure to make payments or deliver returns or statements or allow inspection	Sec. 51.
286.	False statement in declaration	Sec. 52.
287.	Prosecution to be at instance of Inspecting Assistant Commissioner	Sec. 53.
288.	Disclosure of particulars by public servants	Sec. 51 (2) part, Sec. 54 (5).

CHAPTER XXIV

RECOGNISED PROVIDENT FUNDS

Recognition

289.	According and withdrawal of recognition	Sec. 58B (1), (2), (3) & (3A)
290.	Conditions to be satisfied by recognised provident funds	Sec. 58 C (1) part.
291.	Relaxation of conditions	Sec. 58C (1) part, 58D 58 S (4).
292.	Repugnancy in regulations	Sec. 58C (2)

Treatment of contributions and balances

293.	Employer's contributions when deducted in assessing his income	New.
294.	Employer's annual contributions when deemed to be income received by employee	Sec. 58E
295.	Employer's contributions exempt	Sec. 58F.
296.	Exclusion of accumulated balance and Exclusions from total income	Sec. 58G (2) & Sec. 7 (1) Expl. 2, prov. part
297.	Tax on accumulated balance	Sec. 58G(3) & 58G(1)part
298.	Deduction at source of income-tax payable on accumulated balance	Sec. 58H.
299.	Treatment of balance in newly recognised Provident Funds	Sec. 58J(1), (2), (3) & (5)

Clause	Subject matter	Existing sect on
<i>Other Provisions</i>		
300	Account of Recognised Provident Funds	Sec 58 I
301	Appeals	Sec 58B (4)
302	Treatment of fund transferred by employer to trustee	Sec 58K
303	Provisions relating to rules	Sec 58L
304	Application of this Chapter	Sec. 58M
305	Definitions	Sec. 58A.

CHAPTER XXV

APPROVED SUPERANNUATION FUNDS

<i>Approval</i>		
306	Approval and withdrawal of approval	Sec 58 O
307	Conditions for approval	Sec 58P part & New
308	Application for approval	Sec 58Q

<i>Treatment of Investment and Contributions</i>		
309	Income from investment	Sec 58 R part
310	Employer's contribution—deduction for	Sec 58 R part
311	Employee's contribution when exempt	Sec 58 R part
312	Contributions paid to employee when deemed to be income	Sec 58S (1)
313	Deduction of tax on contribution paid to an employee	Sec. 58S (2)

<i>Other Provisions</i>		
314	Deduction from pay of and contributions on behalf of employee to be included in return	Sec 58T
315	Liabilities of trustees on cessation of approval of funds	Sec. 58U
316	Particulars to be furnished in respect of Superannuation Funds	Sec 58V
317	Provisions relating to rules	New
318	Definitions	Sec 58N

CHAPTER XXVI

MISCELLANEOUS

A—Miscellaneous Provisions

319	Bar of double taxation under the Act	New
320	Service of notice—general	Sec 63
321	Service of notice where family is disrupted or firm etc is dissolved	New
322	Service of notice in the case of discontinued business	Sec 25 (6)
323	Marking of exhibits	New
324	Appearance by authorised representative	Sec 61 part and New

Clause	Subject matter	Existing section
325.	Receipt to be given	Sec. 62
326.	Indemnity	Sec. 65
327.	Bar of suits in Civil Court.	Sec. 67
328.	Act to have effect pending legislative provision for charge of tax	Sec. 67B

B—Rules

329.	Power to make rules	Sec. 59
First Schedule	Insurance business	Schedule.
Second Schedule	Procedure regarding recovery under various modes mentioned in section 242 (1)	New
Third Schedule	Manner of recovery by distraint and sale of moveable property under section 246 (6)	New

Clauses 1-2
APPENDIX I

Proposals as inserted in the body of the existing Act*

(This is however not to be treated as a Draft Bill)

[Corresponding sections of the existing Act are noted in the margin, and additions to the provisions of the existing Act are shown in the text in italics, wherever possible]

THE INCOME-TAX ACT, 19—

CHAPTER I

PRELIMINARY

Section 1 Short title extent and commence- ment [s 1]	1 (1) This Act may be called the Income- tax Act, 19—	Income-
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(2) It extends to the whole of India.

(3) It shall come into force on the 1st day of April,

Section 2 Definitions 'Agricultural income' [s 2 (1)]	2 In this Act unless there is anything repugnant in the subject or context,—
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(1) "agricultural income" means—

(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land revenue in India or subject to a local rate assessed and collected by officers of the Government as such,

(b) any income derived from such land by—

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to market or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub clause.

*In the draft clauses references to any other draft clause have been put in a condensed form. For example if section 161 (b) is to be referred to it is referred to only as 161 (b) and not as clause (b) of s 161. The object is to economise space.

References within rectangular brackets are to sections of the existing Act (or, in some cases to the topic dealt with in the section referred to)

Clause 2

- (c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on :

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building; [s. 2 (1) (c) proviso]

(2) "annual value", in relation to any property, means "Annual value" as determined under section 23... [Section re : determination of annual value for income from house property]; [New]

(3) "Appellate Assistant Commissioner" means a person appointed to be an Appellate Assistant Commissioner of Income-tax under section ... 128(1) ... [Section 5 (3)]; "Appellate Assistant Commissioner". [s. 2 (3)]

(4) "approved superannuation fund" and "recognised provident fund" have the meanings assigned to them in section ... 318 ... [58N] and section 305 [58A], respectively; "Approved superannuation fund" and "Recognised provident fund" [New]

(5) "assessee" means a person by whom income-tax or super-tax or any other sum of money is payable under this Act, and includes— "Assessee" [s. 2 (2)]

(a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person or of the amount of refund due to him or to such other person;

(b) every person who is deemed to be an assessee under any provision of this Act;

(c) every person who is deemed to be an assessee in default under any provision of this Act;

(6) "assessment" includes re-assessment; "Assessment" [New]

(7) "assessment year" means the period of twelve months commencing on the 1st day of April every year; "Assessment year" [New]

(8) "average rate of income-tax" means the rate arrived at by dividing the amount of income-tax calculated on the total income, at the rate or rates applicable to the total income, by the total income. "Average rate of income-tax and average

Clause 2

- rate of super tax*
[New] "average rate of super-tax" means the rate arrived at by dividing the amount of super-tax calculated on the total income on which super-tax is chargeable, at the rate or rates applicable to such total income, by such total income;
- "Bus ness"
[s 2 (4)] (9) "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture,
- "Capital asset"
[s 2 (4A)] (10) "capital asset" means property of any kind held by an assessee, whether or not connected with his business, profession or vocation, but does not include—
- (i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business, profession or vocation;
 - (ii) personal effects, that is to say, moveable property (including wearing apparel, jewellery and furniture) held for personal use by the assessee or any member of his family dependent on him;
 - (iii) agricultural land in India*
- * Central Board of Revenue
[s 2 (4B)]
4 of 1924 (11) "the Central Board of Revenue" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924;
- * Commission
[s 2 (5)] (12) "Commissioner" means a person appointed to be a Commissioner of Income-tax under section 128(1), [5(2)],
- "Company"
[s 2 (5A)] (13) "company" means—
- (i) any Indian company, or
 - (ii) any association, whether incorporated or not and whether Indian or non-Indian which is or was assessable or was assessed as a company for the assessment year 1947-1948 under the Indian Income-tax Act, 1922 or which is declared by general or special order of the Central Board of Revenue to be a company for the purposes of this Act;
- 11 of 1922
- "Co-operative society"
[s 2 (5B)]
2 of 1912 (14) "co-operative society" means a co-operative society registered under the Co-operative Societies Act 1912, or under any other law for the time being in force in any State for the registration of co-operative societies;
- "Director",
"Manager",
& "Managing agent"
[s. 2 (8A)]
1 of 1936 (15) "director", "manager" and "managing agent", in relation to a company, have the meanings respectively assigned to them in the Companies Act, 1936,
- "Director of Inspection"
[s. 2 (6)] (16) "Director of Inspection" means a person appointed to be a Director of Inspection under section 128(1) [5 (1)], and includes a person appointed to be an Additional

Clause 2

Director of Inspection, a Deputy Director of Inspection or an Assistant Director of Inspection:

(17) "dividend" includes—

"Dividend".
[s. 2 (6A)]

- (a) any distribution by a company of accumulated profits whether capitalised or not, if such distribution entails the release by the company to its share-holders of all or any part of the assets of the company;
- (b) any distribution by a company of debentures, debenture-stock or deposit certificates in any form, whether with or without interest, to the extent to which the company possesses accumulated profits, whether capitalised or not;
- (c) any distribution made to the share-holders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not;
- (d) any distribution by a company on the reduction of its capital to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not;
- (e) any payment by a company, not being a company in which the public are substantially interested within the meaning of section 117 [23A Expl. 1], of any sum (whether as representing a part of the assets of the company or otherwise) by way of advance or loan to a shareholder or any payment by any such company on behalf or for the individual benefit of a shareholder, to the extent to which the company in either case possesses accumulated profits; but "dividend" does not include—
 - (i) a distribution made in accordance with sub-clause (c) or sub-clause (d) in respect of any share issued for full cash consideration where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets;
 - (ii) any advance or loan made to a shareholder by a company in the ordinary course of its business where the lending of money is a substantial part of the business of the company;
 - (iii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (e), to the extent to which it is so set off.

Explanation 1.—The expression "accumulated profits", wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946, or after the

Clause 2

31st day of March, 1948, and before the 1st day of April, 1956

Explanation 2—The expression “accumulated profits”, in sub-clauses (a), (b), (d) and (e), shall include all profits of the company up to the date of distribution or payment referred to in those sub-clauses

“Earned income”
[s 2 (6AA)]

(18) “earned income” means any income of an assessee who is an individual, Hindu undivided family, unregistered firm or other association of persons not being a company, a local authority, a registered firm or a firm assessed under section 190(b) [clause (b) of sub-section (5) of section 23]—

- (a) which is chargeable under the head “Salaries”, or
- (b) which is chargeable under the head “Profits and gains of business, profession or vocation” where the business, profession or vocation is carried on by the assessee, or
- (c) which represents the share in the profits and gains of a firm, where the assessee is a partner actively engaged in the conduct of the business, profession or vocation of the firm, or
- (d) which is chargeable under the head ‘Other sources’ if it is immediately derived from personal exertion or represents a pension or superannuation or other allowance given to the assessee in respect of his past services or the past services of any deceased person,

but does not include any such income on which no income tax is payable under section 87(iii) (iv) and (v) [sub-section (2) of section 14]

Explanation—Where any such income is, though it is the income of another person, included in the assessee’s total income under the provisions of this Act, it shall be regarded as earned income in the hands of the assessee,

“Firm”,
“partner” and
“partnership”
[s 2 (6B)]
9 of 1932,

(19) “firm” “partner” and ‘partnership’ have the same meanings respectively as in the Indian Partnership Act, 1932, provided that the expression ‘partner’ includes any person who being a minor has been admitted to the benefits of partnership

“Income”
[s 2 (6C)]

(20) “income” includes—

- (i) profits and gains
- (ii) dividend
- (iii) the value of any perquisite or profit in lieu of salary taxable under section 17, clauses (3) and (4) [7, Expls 1 & 2],

Clause 2

- (iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by any other person who has a substantial interest in the company,..... and any sum paid by any such company in respect of any obligation which but for such payment would have been payable by the director or other person aforesaid;
- (v) any sum *chargeable to income-tax* under section 41(2) [second and fourth provisos to clause (vii) of s. 10(2)] or under section 41 (3), [the second proviso to clause (xiv) of sub-section (2) of section 10] and any sum *chargeable to income-tax* under section 41 (1) [sub-section (2A) of s. 10] or under section 62(1) [sub-section (5) of section 12];
- (vi) any sum *chargeable to income-tax* under section 28(ii).....[sub-section (5A) of s. 10] or under section 28(iii) [sub-section (6) of section 10];
- (vii) any capital gains chargeable under section 45..... [section 12B(1), main para, part dealing with charge];
- (viii) the profits and gains of any business of insurance carried on by a mutual insurance association or by a co-operative society, computed in accordance with section 44 [Rule 9 in the Schedule] or any surplus taken to be such profits and gains by virtue of that provision:
- (ix) any contributions and interest thereon, paid to [New] an employee by an approved superannuation fund, to the extent provided in section 312 [58S (1)];

Explanation.—In this clause, the expression “person who has a substantial interest in the company” means a person who is concerned in the management of the business of the company, being the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying not less than twenty per cent. of the voting power.

(21) “Income-tax Officer” means a person appointed to be an Income-tax Officer under section 128(1) or 128(2) [5(3)]; “Income-tax Officer”.
[s. 2 (7)]

(22) “Indian company” means a company formed and registered under the Companies Act, 1956, and includes— “Indian company”.
[s. 2 (7A)]
1 of 1956.

- (i) a company formed and registered under any previous companies law for the time being in force in any part of India (other than the State of Jammu and Kashmir);

Clause 2

- (11) in the case of the State of Jammu and Kashmir, a company formed and registered under any other law for the time being in force in that State,

Provided the registered office of the company in all cases is in India

"Inspecting
Assistant
Commissioner"
[s 2 (6D)]

(23) "Inspecting Assistant Commissioner" means a person appointed to be an Inspecting Assistant Commissioner of Income-tax under section 128(1) [5(3)];

"Inspector of
Income-tax"
[s 2 (6E)]

(24) "Inspector of Income-tax" means a person appointed to be an Inspector of Income-tax under section 128 (2) [5(3)].

"Magistrate"
[s 2 (8)]

(25) "Magistrate" means a Presidency Magistrate, or a Magistrate of the first class

"Non-resident"
[New]

(26) "non-resident" means a person who is not a "resident".

"Person"
[s 2 (9)]

(27) "person" includes—

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm or other association of persons, whether incorporated or not, or the partners of the firm or the members of the association individually,
- (v) a body of individuals, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within sub-clauses (i) to (vi)

"Prescribed"
[s 2 (10)]

(28) "prescribed" means prescribed by rules made under this Act.

"Previous
year"
[New]

(29) "previous year" means previous year as defined in section 5 [section defining previous year, placed in the draft after section 4];

"Principal
officer"
[s 2 (12)]

(30) "principal officer", used with reference to a local authority or a company or any other public body or any association, means—

- (a) the secretary, treasurer, manager or agent of the authority, company, body or association, or
- (b) any person connected with the authority, company, body, or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof.

Clauses 2-3

(31) "public servant" has the same meaning as in the Indian Penal Code, 1860;

"Public servant"
[s. 2 (13)]
45 of 1860

(32) "registered firm" means a firm registered under the provisions of section 192 (a) or under that provision read with section 191 (7) [26A embodied in sections in the chapter on firms dealing with registration];

"Registered firm"
[s. 2 (14)]

(33) "regular assessment" means the assessment..... made under section 147 or 148 [23(1) to (5)];

"Regular assessment"
[s. 18A (5),
main para,
part]

(34) "resident" means a person who is resident in India within the meaning of section 6 [4A];

"Resident"
[New]

(35) "tax" means income-tax and super-tax chargeable under the provisions of this Act;

"Tax".
[New]

(36) "total income" means total amount of income..... referred to in section 4 [4(1)] computed in the manner laid down in this Act;

"Total income"
[s. 2 (15)
part]

(37) "total world income" includes all income,..... wherever accruing or arising, except incomes which are not included in the total income under any of the provisions of Chapter III [Incomes which do not form part of total income] and except any capital gain which is not includible in the total income of an assessee;

"Total world income"
[s. 2(15),
part]

(38) "unregistered firm" means a firm which is not a registered firm.

"Unregistered firm"
[s. 2 (16)]

CHAPTER II

BASIS OF CHARGE

(1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of every person of the previous year or years, as the case may be, for that assessment year :

Section 3
Charge of in-
come-tax.
[s. 3]

Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.

(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

Clause 4

Section 4
Scope of total
income
Residents

(1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which—

- [s 4 (1) (a) part] (a) is received or is deemed to be received in India in such year by or on behalf of such person; or
- [s 4(1)(b)(i)] (b) accrues or arises or is deemed to accrue or arise to him in India during such year, or
- [s 4(1)(b)(ii)] (c) accrues or arises to him without India during such year, or
- [s 4 (1) (b) (ii)] (d) having accrued or arisen to him without India before the beginning of such year and after the 1st day of April, 1933, is brought into or received in India during such year by him or on his behalf, or
- [s 4 (1) Expl read with s 4 (1)(b)(i) and s 2(14A)] (e) having accrued or arisen to him in a merged territory other than Cooch-Bihar after the 1st day of April, 1933, and before the commencement of the previous year for the assessment year 1949-1950 is brought into or received in any part of India other than that merged territory during such year by him or on his behalf, or

[Do] (f) having accrued or arisen to him in a territory which immediately before the 1st day of November, 1956, was comprised in a Part B State other than Jammu and Kashmir, or in the merged territory of Cooch-Bihar, after the 1st day of April 1933 and before the commencement of the previous year for the assessment year 1950-1951, is brought into or received in any part of India other than that territory or merged territory during such year by him or on his behalf, or

[Do] (g) having accrued or arisen to him in the State of Jammu and Kashmir after the 1st day of April, 1933, and before the commencement of the previous year for the assessment year 1954-1955 is brought into or received in any part of India other than the State of Jammu and Kashmir during such year by him or on his behalf

Non residents
[s 4 (1) (a),
part, and s 4
(1) (c)]

(2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non resident includes all income from whatever source derived which—

- (a) is received or is deemed to be received in India in such year by or on behalf of such person, or
- (b) accrues or arises or is deemed to accrue or arise to him in India during such year

Clauses 4-5

(3) Income accruing or arising without [s. 4(1),
Explan. 1]
India shall not be deemed to be received in or brought into *India* within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in *India*.

(1) For the purposes of this Act, "previous year" Section 5.
Previous year
 means—

- [s. 2(11)(i)(a)
main para,
earlier part]
- (a) *the financial year immediately preceding the assessment year; or*
- (b) *if the accounts of the assessee have been made up to a date within the said financial year,.....* [s. 2(11)(i)(a)
main para,
latter part]
then, at the option of the assessee, the twelve months ending on such date; or
- (c) *in the case of any person, business or company or class of person, business or company, such period as may be determined by the Central Board of Revenue or by any authority authorised by the Board in this behalf; or* [s. 2 (11) (i)
(b)]
- (d) *in the case of a business, profession or vocation.....* [s. 2 (11) (i)
(c), main
para]
.....newly set up in the said financial year, the period beginning with the date of the setting up of the business, profession or vocation and—
- (i) *ending with the said financial year, or*
- (ii) *if the accounts of the assessee have been made up to a date within the said financial year, then, at the option of the assessee, ending on that date, or*
- (iii) *ending with the period, if any, determined under clause (c),*

As the case may be; or

- (e) *in the case of a business, profession or vocation newly set up in the twelve months immediately preceding the said financial year—* [s. 2 (11) (i)
(c), Prov.,
latter part]
- (i) *if the accounts of the assessee have been made up to a date within the said financial year and the period from the date of the setting up of the business, profession or vocation to such date does not exceed twelve months, then, at the option of the assessee, such period, or*
- (ii) *if any period has been determined under clause (c), then the period beginning with the date of the setting up of the business, profession or vocation and ending with that period.*

As the case may be;

- (f) *where the assessee is a partner in a firm and the firm has been assessed as such, then, in respect of the assessee's share of the income.....of the firm,.....the period determined as previous year for the assessment of the income.....of the firm;* [s. 2(11)(ii)]

Clauses 5-6

[Sch dule,
Rule 5 (i)]

4 of 1938

31 of 1956

(g) in respect of profits and gains from life insurance business, the year for which annual accounts are required to be prepared under the Insurance Act, 1938, or under that Act as read with section 43 of the Life Insurance Corporation Act, 1956, immediately preceding the assessment year

[s 2 (11) (i)
(c) Prov
earlier part]

(2) Where an assessee has newly set up a business, profession or vocation in the said financial year and his accounts are made up to a date in the assessment year in respect of a period not exceeding twelve months from the date of such setting up, then the assessee shall, in respect of that business, profession or vocation, at his option, be deemed to have no previous year for the said assessment year under sub-clause (i) of clause (d) of sub-section (1), and such option shall, in relation to the immediately succeeding assessment year, have effect as an option exercised under sub-clause (i) of clause (e) of sub-section (1)

[s 2 (11) (i),
opening
lines]

(3) Subject to the other provisions of this section, an assessee may have different previous years in respect of separate sources of his income

[s 2 (11) (i)
(a) Prov]

(4) Where in respect of a particular source of income or in respect of a business, profession or vocation newly set up, an assessee has once exercised the option under clause (b) or sub-clause (ii) of clause (d) or sub-clause (i) of clause (e) of sub-section (1) or has once been assessed, then he shall not, in respect of that source, or as the case may be, business profession or vocation be entitled to vary the meaning of the expression 'previous year' as then applicable to him, except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit to impose

Section 6
Residence in
India

For the purposes of this Act—

(1) any individual is resident in India in any previous year, if he—

[s 4A (a)(i)]

(a) is in India in that year for a period amounting in all to one hundred and eighty-two days or more, or

[s 4A(a)(ii)]

(b) maintains or causes to be maintained for him a dwelling place in India for a period or periods amounting in all to one hundred and eighty-two days or more in that year and has been in India for any time in that year, or

(c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to thirty days or more in that year,

Clauses 6-8

(2) a Hindu undivided family, firm or other association of persons is resident in India in any previous year, unless during that year the control and management of its affairs is situated wholly without India;

(3) a company is resident in India in any previous year, [s. 4A (c)] if—

- (i) it is an Indian company; or
- (ii) during that year the control and management of its affairs is situated wholly in India;

(4) every other person is resident in India in any previous year, unless during that year the control and management of his affairs is situated wholly without India; [New]

(5) if a person is resident in India in a previous year [New] relevant to an assessment year in respect of any source of income, he shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each of his other sources of income;

(6) a person is "not ordinarily resident" in India in any previous year if such person is— [s. 4B(a)(b)]

- (a) an individual, who has not been resident in India in nine out of the ten previous years preceding that year; or has not during the seven years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and thirty days or more; or
- (b) a Hindu undivided family whose manager has not been resident in nine out of the ten previous years preceding that year, or has not during the seven years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and thirty days or more;

The following incomes shall be deemed to be received in the previous year—

- (i) the annual accretion in the previous year to the balance at the credit of an employee participating in a recognised provident fund, to the extent provided in section 294 [58E]; [New] Section 7
Income
deemed to be
received.
- (ii) the transferred balance in a recognised provident fund, to the extent provided in section 299(3) [58J(3)]. [New]

For the purposes of inclusion in the total income of an assessee, any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed..... Section 8
Dividend
income
[s. 16(2)
main para,
earlier part]

Clauses 9-11

Section 9
 Income
 deemed to
 accrue or
 arise in India
 [s 42 (1)
 main para
 and et half]

The following incomes shall be deemed to accrue or arise in India—

- (i) all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India or through or from any money lent at interest and brought into India in cash or in kind or through or from the sale, exchange transfer or relinquishment of a capital asset situate in India

[s 42 (3)]

Explanation.—In the case of a business of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India.

[s 4 (2),
 Expl 2]

- (ii) income which falls under the head "Salaries", if it is earned in India.

Provided that any pension payable outside India to a person residing permanently outside India shall not be deemed to accrue or arise in India, if the pension is payable to a person referred to in article 314 of the Constitution or to a person who, having been appointed before the 15th day of August, 1947, to be a Judge of the Federal Court or of a High Court within the meaning of the Government of India Act 1935, continues to serve on or after the commencement of the Constitution as a Judge in India,

[s 4 (1)
 Expl 3]

- (iii) a dividend paid by an Indian company without India, to the extent to which it has been paid out of profits subjected to income-tax in India

Section 10
 Remittances
 by a non-resident husband
 [s 4 (2)]

For the purposes of section 4(1)(b) [4(1) (b) (i)], where a husband is not resident in India remittances received by or on behalf of his wife resident in India out of any part of his income which is not included in his total income shall be deemed to be income accruing in India to the wife

CHAPTER III

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

Section 11
 Incomes not
 included in
 total income
 Agricultural
 income
 [s 4(3)(viii)]
 Income re-
 ceived as

In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included therein—

- (1) agricultural income,

(2) any sum received by an individual as a member of a Hindu undivided family, where such sum has been paid out of the income of the family, or, in the case of

Clause 11

any impartible estate, where such sum has been paid out of the income of the holder of the estate belonging to the family;

member of
Hi du undi-
vided family
[s. 14(1)]

(3) any receipts which are of a casual and non-recurring nature, *unless they are—*

Casual receipts.
[s. 4(3)(vii)]

(i) capital gains, chargeable under the provisions of section 45 [12B, part re: charge]; or

(ii) receipts arising from business or the exercise of a profession, vocation or occupation; or

(iii) receipts by way of addition to the remuneration of an employee;

(4) in the case of a resident—

(i) *the unremitted foreign income chargeable to income-tax under clause (c) of sub-section (1) of section 4 [section 4 (b) (ii)], subject to the following limit, that is to say,—*

Foreign income of residents.
[s. 4 (1), 3rd Prov.]

(a) *the amount not to be included in the total income by virtue of this sub-clause shall not exceed four thousand five hundred rupees; and*

(b) *where any part of such unremitted foreign income consists of salaries paid by the Government, a local authority or a corporation established by a Central, State or Provincial Act, the amount of such salaries not to be included as aforesaid shall be further limited to a sum calculated at the rate of one thousand rupees for each month of service in respect of which the salaries are received abroad;*

(ii) *any income accruing or arising outside India andchargeable to income-tax by virtue of clause (d) of sub-section (1) of section 4 [4 (1) (b) (iii)], if he was a non-resident in two out of the three years immediately preceding the previous year;*

[s. 4(1), 4th proviso]

(iii) *where the case does not fall under sub-clause (ii), income accruing or arising outside India and chargeable to income-tax by virtue of section 4(1) (d) [4(1) (b) (iii)], if within three months of the date of receipt in India of such income..... the assessee makes payment of the amount of income-tax, interest or penalty or other sum, if any, due from him on such date;*

[s. 4(1), 5th proviso]

(iv) *if such person is not ordinarily resident in India during the previous year, income which accrues or arises to him without India..... and is neither derived from a business controlled in or a profession or a vocation set up in India nor brought into or received in India by him during the previous year;*

[s. 4(1), 2nd proviso]

Clause 11

Non residents (5) *in the case of a non-resident—*

[s 4(3)(xi)] (i) any income from interest on or from premium on the redemption of any bonds issued by the Central Government under a loan agreement between the Central Government and the International Bank for Reconstruction and Development, or by any industrial undertaking or financial corporation in India under a loan agreement with the said Bank which is guaranteed by the Central Government ;

[s 4(3)(xx)] (ii) any income from interest payable without India on a loan issued for public subscription before the 1st day of April, 1938

Provided that income referred to in sub-clause (ii) above shall be included in the total world income of the non-resident

Travel concession for citizens [Sec 4(3)(via) para (b)] (6) *subject to such conditions as the Central Government may prescribe, the value of any travel concession or assistance received by or due to any person, being a citizen of India, from his employer for himself, his wife and children, in connection with his proceeding on leave to his home-town or village in India,*

Foreign Nationals (7) *in the case of an individual who is not a citizen of India—*

[s 4(3)(via), para (a)] (i) *subject to such conditions as the Central Government may prescribe, passage moneys or the value of any free or concessional passage received by or due to such individual from his employer for himself, his wife and children, in connection with his proceeding on home leave out of India,*

[s 4(3)(x)(b)] (ii) *the remuneration received by a Consul General, Consul, Vice Consul or Consular Agent of a foreign State from such State for service in such capacity,*

[s 4(3)(x)(c)] (iii) *the remuneration received by an employee of the consulate of a foreign State from such State for service in such capacity,*

[s 4(3)(x)(d)] (iv) *the official salary of a Trade Commissioner or other official representative in India of a foreign State if the official salary of the corresponding official, if any, of the Central Government resident for similar purposes in the country concerned is similarly exempted from payment of income-tax or super-tax or any corresponding tax in that country,*

[s 4(3)(x)(e)] (v) *the official salary of a member of the staff of a Trade Commissioner or official representative referred to in sub-clause (iv), when such member is a subject of the country represented, if the official*

Clause 11

salary of the members of the staff of the corresponding officials of the Central Government is similarly exempted from payment of income-tax or super tax or any corresponding tax in that country;

(8) the remuneration received by an employee of a foreign enterprise for services rendered by him during his stay in India, provided the following conditions are fulfilled— Employee of foreign enterprises
[s. 4(3)(xiv)]

- (i) the foreign enterprise is not engaged in any trade or business in India;
- (ii) the employee is not a citizen of India;
- (iii) his stay in India does not exceed in the aggregate a period of ninety days in such previous year;
- (iv) his stay in India did not exceed in the aggregate a period of ninety days in any financial year prior to the previous year; and
- (v) such remuneration is not liable to be deducted from the income, of the employer chargeable under this Act;

(9) the remuneration, chargeable under the head "Salaries", for services rendered by an individual who is not a citizen of India, as a technician in the employment of Government or of a local authority or of any corporation set up under any special law or in any business carried on in India, if he was not resident in any of the four financial years immediately preceding the financial year in which he arrived in India, to the extent mentioned below— Foreign technicians.
[s. 4(3)(xiva) main para].

- (i)where a contract of service was approved by the Central Government before the commencement of his servicesuch remuneration due to or received by such individual during the financial year in which he arrived in India and the two financial years next following; [s. 4(3)(xiva), 2^d proviso]
- (ii) in other cases, such remuneration due to or received by such individual for the period of three hundred and sixty five days in all commencing from the date of his arrival..... [s. 4(3)(xiva), 1st proviso]

Explanation 1 :—For the purposes of this clause, services rendered by an individual in relation to a business in India before its commencement shall be deemed to be services rendered by him in a business carried on in India. [New]

Explanation 2 :—"Technician" means a person having specialised knowledge and experience in constructional or manufacturing operations, or in mining or in the generation or distribution of electricity or any other form of power, who is employed in India in a capacity in which such specialised knowledge and experience are actually utilized: [s. 4(3)(xiva) Expln.]

Provided that, in relation to—

- (a) a person to whom sub-clause (i) of this clause applies and whose contract of service was approved by the Central Government before the 1st day of March, 1958, or [Cf. s. 13(1), Finance Act, 1958, which continues the definition as unamended,

Clause 11

by the
Finance
Act 1958
for certain
cases]

(b) any other person who arrived in India before the 1st day of April, 1958, 'technician' means a person having specialised knowledge in industrial arts and sciences and having experience in industrial practice who is employed in India in a capacity in which such specialised knowledge and experience are actually utilized

Persons work-
ing under
Technical
Assistance
Programmes
[s 4(3) (xv)]

(10) (i) in the case of an individual who is assigned to duties in India in connection with any co-operative technical assistance programmes and projects in accordance with an agreement entered into by the Central Government and the Government of a foreign State (the terms whereof provide for the exemption given by this clause)—

(a) the remuneration received directly or indirectly from the Government of that foreign State for such duties, and

(b) any other income of such individual which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such individual is required to pay any income or social security tax to the Government of that foreign State,

(ii) any income of the members of the family of such individual accompanying him to India, which accrues or arises outside India and is not deemed to accrue or arise in India, in respect of which such member is required to pay any income or social security tax to the Government of that foreign State,

Death-cum-
retirement
gratuity
[s 7(1) Expt
2 prov part]

(11) any death-cum-retirement gratuity received under the revised Pension Rules of the Central Government or under any similar scheme of a State Government, a local authority or a corporation established by a Central, State or Provincial Act,

Payments
from a Provi-
dent Fund
of 1925
[s 7(1) Expt
2 prov part]

(12) any payment from a provident fund to which the Provident Funds Act, 1925, applies,

Accumulated
balance in
recognised
provident
fund
[New]

(13) the accumulated balance due and becoming payable to an employee participating in a recognised provident fund, to the extent provided in section 296 [58G(2)],

Payments
from
approved
superannua-
tion fund
[s 7(1) Expt
2 prov part]

(14) any payment from an approved superannuation fund made on the death of a beneficiary or in lieu of or in commutation of an annuity, or by way of refund of contributions on the death of a beneficiary or on his leaving the employment in connection with which the fund is established,

Clause 11

(15) any special allowance or benefit, not being in the nature of an entertainment allowance or other perquisite within the meaning of section 17, *clause* (3) [7(1)], [s. 4(3)(vi)] specifically granted to meet expenses wholly and *exclusively* incurred in the performance of the duties of an office or employment of profit, to the extent to which such expenses are actually incurred for that purpose;

(16) (i) interest on the 10 year Treasury Savings Deposits Certificates or the monthly payments on the 15 year Annuity Certificates issued by or under the authority of the Central Government for an amount not exceeding the maximum amount which is permitted to be invested therein; [s.4(3)(xvii)]

(ii) interest on deposits in Post Office Savings Bank Post Office Cash Certificates, Post Office National Savings Certificates and Post Office National Plan Certificates for amounts not exceeding in each case the maximum amount which is permitted to be deposited or invested therein; [s.4(3)(xviii)]

(iii) interest on securities held by the Issue Department of the Central Bank of Ceylon constituted under the Ceylon Monetary Law Act, 1949; [s.4(3)(xviii)]

(iv) interest payable—

[s.4(3)
(xviib)]

(a) by Government or a local authority on moneys borrowed by it from sources outside India from any *non-resident* or from any institution established outside India;

(b) by an industrial undertaking in India on moneys borrowed by it under a loan agreement entered into with any such financial institution in a foreign country as may be approved in this behalf by the Central Government by general or special order;

(c) by an industrial undertaking in India on any moneys borrowed or debt incurred by it in a foreign country in respect of the purchase outside India of capital plant and machinery in any case where the loan or debt is approved by the Central Government, having regard to its terms generally and in particular to the terms of its repayment;

(17) *scholarships, granted to meet the cost of education;* Scholarships [New]

(18) any income chargeable under the head "Income from house property" in respect of a building the erection of which is begun and completed between the 1st day of April, 1946, and the 31st day of March, 1956, (both dates inclusive), for a period of two years from the date of such completion; [See item 5 of notification No. 878F(Income-tax) dt. 21-3-1922] Income from new building [s.4(3)(xii)]

Clause 11

- Daily allowance received by any person by reason of his membership of Parliament or of any State Legislature or of any Committee thereof,
- (19) any daily allowance received by any person by reason of his membership of Parliament or of any State Legislature or of any Committee thereof,
- (20) any payment made, whether in cash or in kind, by the Central Government or any State Government in pursuance of gallantry awards instituted or approved by the Central Government,
- (21) any amount received by the Ruler of an Indian State as privy purse under article 291 of the Constitution,
- (22) (i) income of a local authority chargeable under the head "Interest on securities", "Income from house property", "Capital gains" or "Income from other sources",
- (ii) income from a trade or business carried on by a local authority which accrues or arises from the supply of a commodity or service within its own jurisdictional area,
- (23) any income of a scientific research association for the time being approved for the purposes of section 35(1) (ii) [10 (2)(xiii)] which is applied solely to the purposes of that association,
- (24) any income of a University or other educational institution, existing solely for educational purposes and not for purposes of profit,
- (25) any income chargeable under the head "Interest on securities" "Income from house property" and "Income from other sources" of a registered trade union within the meaning of the Indian Trade Unions Act, 1926, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen,
- (26) (i) interest on securities which are held by, or are the property of, any provident fund to which the Provident Funds Act 1925, applies, and any capital gains of the fund arising from the sale, exchange or transfer of such securities,
- (ii) any income received by trustees on behalf of a recognised provident fund,
- (iii) income of an approved superannuation fund, to the extent provided in section 309 [s 58R, main para],
- (27) any income of a member of a Scheduled Tribe as defined in clause (25) of article 366 of the Constitution residing in any area specified in Part A or Part B of the table appended to paragraph 20 of the Sixth Schedule to the Constitution or in the Union Territories of Manipur and Tripura provided such member is not in the service of Government

Daily allowance
of members of
Parliament and
other Legislatures

[s 4(3)(xix)]
Gallantry
awards

[s 4(3)(xi)]
Privy Purse
[S 4 (3) (x)]
(a)]

Local authorities

[S 4 (3) (ii),
para]
[S 4 (3) (iii)
para]

Scientific Research Association
[S 4(3)(xiii)]

Educational Institutions
[New]

[See item 12
of Notification
No 878F
(Income-tax)
dated
21 3 22]

Certain incomes of Trade Unions
[S 4(3)(xii)]
16 of 1926

Income of provident and superannuation funds
[S 4(3)(iv)]
19 of 1925
[s 4(3)(ix)]

[New]

Scheduled Tribes
[s 4(3)(xx)]

Clause 12

(1) Subject to the provisions of sections 63 to 66, [16 (c)], the following income shall not be included in the total income of the previous year of the person in receipt of the income—

Section 12
income from
property held
for religious
or charitable
purposes and
income of religious or charitable institution.
[s. 4 (3) (i),
main para.]

(i) (a) so much of the income derived from property held under trust wholly for charitable or religious purposes as is applied or accumulated for application to such..... purposes in India: and

(b) in the case of property so held in part only for such purposes, so much of the income derived from the property as is applied or finally set apart for application to such purposes in India:

Provided that so much of any income referred to in sub-clause (a) or (b) of this clause as is applied to purposes other than charitable or religious purposes as aforesaid, or ceases to be accumulated or set apart for application thereto,.....shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart;

[s. 4 (3) (i),
proviso (a),
opening line
and proviso
(c)]

(ii) (a) income from property held under trust..... created on or after the 1st day of April, 1952, for charitable purposes which tend to promote international welfare in which India is interested, applied to such purposes outside India, and

[s. 4 (3) (i),
proviso (a)
(ii)]

(b) income from property held under trust..... for charitable or religious purposes created before the 1st day of April, 1952, applied to such purposes outside India,

[s. 4 (3) (i)
proviso a(i)]

if the Central Board of Revenue by general or special order directs in either case that it shall not be included in the total income of the person in receipt of such income.

Explanation.—In this sub-section, “property” does not include business.

(2) Subject to the provisions of sections 63 to 66 [16 (c)], any income derived from business carried on by or on behalf of a trust for charitable or religious purposes shall not be included in the total income of the previous year of the trustees, if the conditions specified in sub-section (4) are satisfied.

[s. 4 (3) (i),
proviso (b)
part]

(3) Any income derived from business carried on by or on behalf of a religious or charitable institution shall not be included in the total income of the previous year of the institution, if the conditions specified in sub-section (4) are satisfied

[s. 4 (3) (i)
proviso (b)
part]

Clauses 12-13

- [s 4 (3) (i),
Prov
part]
- (4) The provisions of sub section (2) or sub-section (3) shall apply only if the following conditions are satisfied—
- (a) the income is applied wholly for the purposes of the trust or institution, as the case may be, and
- (b) either the business is carried on in the course of the actual carrying out of a primary purpose of the trust or institution, or the work in connection with the business is mainly carried on by beneficiaries of the trust or institution

- [s 4(3) (ii)]
- (5) Any income of a trust for charitable or religious purposes or a religious or charitable institution, derived from voluntary contributions and applicable solely to charitable or religious purposes shall not be included in the total income of a previous year of the trustees or the institution, as the case may be

- [s 4(3), last
para part]
- (6) Nothing contained in this section shall operate to exempt from the provisions of this Act that part of the income from property held under a trust for private religious purposes, which does not enure for the benefit of the public

- [s 4(3), last
para part]
- Explanation.—In this section,—
- (a) "charitable purpose" includes relief of the poor, education, medical relief and advancement of any other object of general public utility,
- (b) "trust" includes any other legal obligation.

[New]
[Cf s 4(3)
(i), main
para.]

- [s 4 (3) (i),
Prov (a) (i)
& (ii),
s 4(3), last
para]
Sect on 13
Business as
ceased under
the Income-
tax Act, 1918
[s 25(3),
part]
7 of 1918
- (1) Where any business, profession or vocation on which income-tax was at any time charged under the provisions of the Indian Income-tax Act 1918 is discontinued then unless the provisions of sub-section (2) have been rendered applicable by virtue of there having been a succession the income, of the period from the date of commencement of the previous year in which the business was discontinued to the date of discontinuance, shall not be included in the total income of the person who was carrying on the business, profession or vocation.

- [s 25(4),
part]
7 of 1918
- (2) Where the person who was on the 1st day of April, 1939 carrying on any business, profession or vocation on which income tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is succeeded in such capacity by another person, the change not merely being a change in the constitution of a firm, the income of such business, profession or vocation of the period from the date of commencement of the previous year in which the succession took place to the date of succession shall not be included in the total income of the first mentioned person

Clauses 13-16

(3) *The provisions of sub-sections (1) and (2) shall not* ^[s. 25(4)]
apply to a business, profession or vocation on which in- ^{Proviso (b).}
come-tax was at any time charged in the hands of a com-
pany under the Indian Income-tax Act, 1886, or on which ^{2 of 1886}
income-tax would have been charged in the hands of a
company for the assessment year ending on the 31st day
of March, 1918, if the company, having been in existence
in that year, had also been in existence in the year ending
on the 31st day of March, 1917.

CHAPTER IV

COMPUTATION OF TOTAL INCOME

Heads of income

Save as otherwise provided by this Act, *all income* ^{Section 14.}
shall, for the purposes of charge of income-tax and com- ^{Heads of in-}
putation of total income, be classified under the following ^{come.}
heads of income— ^[s. 6]

A—Salaries.

B—Interest on securities.

C—Income from house property.

D—Profits and gains of business, profession or vocation.

E—Capital gains.

F—Income from other sources.

A—Salaries

The following income shall be chargeable to income- ^{Section 15}
tax under the head “Salaries”— ^{Salaries.}

(a) *any salary.....due from an employer or former* ^{[s. 7(1),}
employer to an assessee in the previous year, whe- ^{main para.}
ther paid or not;

(b) *any salary paid or allowed to him in the previous*
year by or on behalf of the employer or former
employer though not due or before it became due
to him;

(c) *any arrears of salary paid to him in the previous*
year by or on behalf of the employer or former
employer, if not charged to income-tax for any
earlier previous year.

The income chargeable under the head “Salaries” shall ^{Section 16}
be computed after making the following deductions, ^{Deductions.}
namely— ^[s. 7 (2) (i)]

(i) *any amount not exceeding five hundred rupees,*
expended by the assessee on the purchase of books
and other publications necessary for the purpose
of his duties;

Clauses 16-17

[s 7 (2) (i)]

(ii) in respect of any allowance in the nature of an entertainment allowance specifically granted to the assessee by his employer—

- (a) in the case of an assessee who is in receipt of a salary from the Government, a sum equal to one-fifth of his salary (exclusive of any special allowance, benefit or other perquisites) or five thousand rupees, whichever is less, and
- (b) in the case of any other assessee who is in receipt of such entertainment allowance and was in receipt of such entertainment allowance regularly from his present employer before the 1st day of April, 1955, the amount of such entertainment allowance regularly received by the assessee from his present employer in any previous year ending before the 1st day of April, 1955, or a sum equal to one-fifth of his salary (exclusive of any special allowance, benefit or other perquisites) or seven thousand five hundred rupees, whichever is the least

[s 7(2) (i a)
Proviso

(iii) where the assessee is not in receipt of a conveyance allowance whether as such or as part of his salary, and owns a conveyance which is used for the purposes of his employment, such sum as the Income-tax Officer may estimate in respect of such use as representing the expenditure incurred by him in its maintenance and as representing its normal wear and tear,

[s 7 (2) (ia)
main para]

[s 7(2) (i i)]

(iv) any amount actually expended by the assessee, not being an amount expended on the purchase of books or other publications, or on entertainment or on the maintenance of a conveyance, which, by the conditions of his service, he is required to spend out of his remuneration wholly and exclusively in the performance of his duties

Section 17
Interpretation

For the purposes of sections 15 and 16 [preceding sections re salary] and of this section—

'Employer'
[s 7(1) part]

(1) 'employer' means an employer, who is the Central Government, a State Government, any foreign Government, a local authority, a company, any public body or association, or any private employer,

Salary
[s 7(1) part]

(2) "salary" includes—

- (i) any salary or wages,
- (ii) any annuity or pension,
- (iii) any gratuity,

(iv) any fees commissions perquisites or profits in lieu of or in addition to any salary or wages

Clause 17

- (v) advances by way of loan or otherwise of the amounts enumerated in sub-clauses (i), (ii), (iii) and (iv) above;
- (vi) the annual accretion to the balance at the credit of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under section 294 [New] [58E];
- (vii) the aggregate of all sums that are comprised in the transferred balance, as referred to in section 299 (2) [58J (2)] of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under section 299(3) [58J (3)];
- (3) "perquisite" includes—
- "Perquisite"
[s. 7(1)
Expl ..1]
- (i) the value of rent free accommodation.....provided to the assessee by his employer; [tem part] (i)
- (ii) the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer; [tem part] (i)
- (iii) the value of any benefit or amenity granted, or provided.....free of cost or at concessional rate in any of the following cases:—
- (a) by a company to an employee who is a director thereof..... [tem part] (ii)
- (b) by a company to an employee who is a shareholder concerned in the management of the company and is the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying twenty per cent or more of the voting power; [tem part with s. 2(CC) (iii)] (ii)
- (c) by any employer (including a company) to an employee to whom the provisions of paragraphs (a) and (b) of this sub-clause do not apply and whose income under the head "Salaries" exclusive of the value of all benefits or amenities not provided by way of monetary payment exceeds eighteen thousand rupees; [tem (iii)] (iii)
- (iv) any sum paid by the employer in respect of any obligation which but for such payment would have been payable by the assessee; and [Item (iv)] (iv)
- (v) any sum payable by the employer, whether directly or through a fund other than a recognised provident fund or an approved superannuation fund to effect an assurance on the life of the assessee or to effect a contract for an annuity on the life of the assessee;

Clauses 17-20

'Profits in lieu of salary'

(4) "profits in lieu of salary" includes—

{s 7 (1), Explanatory part}

- (i) the amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with, the termination of his employment, whether solely as compensation for loss of employment, or for any other consideration,
- (ii) the amount of any contributions to an approved superannuation fund (including interest on such contributions) paid to an employee, to the extent to which such amount is deemed to be the income of the employee under section 312 [58-5(1)],
- (iii) without prejudice to the provisions of sub-clause (i) of this clause, any payment due to or received by an assessee from an employer or former employer or from a provident or other fund, (not being an approved superannuation fund), to the extent to which it does not consist of contributions by the assessee or interest on such contributions

B Interest on securities

Section 18 Interest on securities {s 18 1st para.}

The following amounts received by an assessee in the previous year shall be chargeable to income-tax under the head 'Interest on securities'

- (i) interest on any security of the Central Government,
- (ii) interest on any security of a State Government;
- (iii) interest on debentures or other securities for money issued by or on behalf of a local authority or a company

Section 19 Deductions {s 19 1st para.}

Subject to the provisions of section 21 [section regarding amounts not deductible], the income chargeable under the head "Interest on securities" shall be computed after making the following deductions—

- (i) any reasonable sum expended by the assessee for the purpose of realising such interest,
- (ii) any interest payable on moneys borrowed for the purpose of investment in the securities by the assessee

Section 20. Banking Company

{s 20 Explanatory part}

(1) In the case of a banking company—

- (i) the sum to be regarded as a sum reasonably expended for the purpose referred to in clause (i) of section 19 [section regarding deductions] shall be an amount bearing to the aggregate of its expenses as are admissible under the provisions of sections 30 31 36 and 37 other than clauses (3) (5) and (6) of section 36, [sub-section (2) of section 10 (other than clauses (iii), (vi) (via), (vib), (vii), (viii), (xi), (xii), (xiii) and (xiv) thereof)] the

Clauses 20-21

same proportion as the gross receipts from interest on securities (inclusive of tax deducted at source) chargeable to *income-tax* under section 18 [main section re: Interest on Securities] bear to the gross receipts of *the company* from all sources which are included in the profit and loss account of the company ;.....

- (ii)*the amount to be regarded as interest payable on moneys borrowed for the purpose referred to in clause (i) of section 19 [section regarding deductions] shall be an amount which bears to the amount of interest payable on all moneys borrowed by the company the same proportion as the gross receipts from interest on securities (inclusive of tax deducted at source) chargeable to income-tax under section 18 [main Section for interest] bear to the gross receipts from all sources which are included in the profit and loss account of the company ;* [s. 8, Expln. (b) pari]

(2) The expenses deducted under clauses (i) and (ii) of sub-section (1) shall not again form part of the deductions admissible under sections 30 to 37 [sub-section (2) of section 10] for the purposes of computing the income of the company under the head "Profits and gains of business, profession or vocation". [s. 8, Expln. (a) and (b) last lines]

Explanation :—For the purposes of this section, "moneys borrowed" includes moneys received by way of deposits. [s. 8, Expln. (b) first line]

Notwithstanding anything contained in sections 19 and 20 [sections regarding deductions and banking company], the following amounts shall not be deducted in computing the income chargeable under the head "Interest on securities"— [s. 8, 1st proviso, latter pari]

- (i) interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1st day of April, 1938) on which tax has not been paid or deducted under section 202 or 204 [section 18] and in respect of which there is no person in India who may be treated as an agent under section 173 [section 43] ;
- (ii) sums expended by the assessee for the purpose of realising interest on securities on which no income-tax is payable under section 87 (i) or 87 (ii) [s. 8 provisos 2 and 3] ;
- (iii) interest payable on money borrowed for the purpose of investment in securities, being securities on the interest on which no income-tax is payable under section 87(i) or 87(ii) [section 8, provisos 2 and 3].

Clauses 22-23

C Income from house property

Section 22 The annual value of property consisting of
 Income from any buildings or lands appurtenant thereto of which the
 house prop- assessee is the owner, other than such portions of such
 erty property as he may occupy for the purposes of any busi-
 [s 9 (1) ope- ness profession or vocation carried on by him the profits of
 ning para] which are assessable to income tax, shall be chargeable to
 income tax under the head 'Income from house property'

Sect on 23 (1) For the purposes of section 22 [chargeability of
 Annual value income from house property], the annual value of any prop-
 [s 9 (2) 1st erty shall be deemed to be the sum for which the prop-
 para] erty might reasonably be expected to let from year to
 year

[New] (2) In determining the sum for which the property
 might reasonably be expected to let from year to year, due
 regard may be had, where the property is let to a tenant,
 to the following factors, besides others, namely—

- (i) the annual rent agreed to be paid by the tenant,
- (ii) the other obligations, if any, undertaken by the tenant on behalf of the owner, including the payment of taxes due to the Government or a local authority,
- (iii) the annual value of the property, if any, as fixed by the local authority for the purposes of any tax on property levied by it, and
- (iv) the rents of properties in the neighbourhood similarly situated and with similar advantages

[s 9 (2) 1st (3) Where the property is in the occupation of
 proviso] the owner for the purposes of his own residence, the
 annual value of the property shall be the annual
 value of the property determined in the same manner as
 if the property had been let, reduced by the lower of the
 following—

- (i) one half of such annual value, or
 - (ii) one thousand eight hundred rupees,
- but shall in no case exceed eleven per cent of all income of the assessee, other than the annual value of such property liable to inclusion in his total income under this Act

[s 9 (2) 2nd (4) Where the property referred to in sub-sec-
 prov so ex tion (3) consists of one residential house only and it can-
 cept last line] not actually be occupied by the owner by reason of the
 fact that owing to his employment, business, profession or
 vocation carried on at any other place he has to reside
 at that other place in a building not belonging to him
 the annual value of such house shall—

- (a) if the house was not actually occupied by the owner during the whole of the previous year, be taken to be nil, or

Clauses 23-24

- (b) if the house was actually occupied by the owner for a fraction of the previous year, be taken to be that fraction of the annual value determined under sub-section (3);

provided the following conditions are in either case fulfilled:—

- (i) the house is not actually let, and
- (ii) no other benefit therefrom is derived by the owner.

(1) Income chargeable under the head "Income from house property" shall, subject to the provisions of sub-section (2), be computed after making the following deductions, namely— Section 24
Deductions.

- (i).....where the property is in the occupation of a tenant, one half of the total [s. 9 (2), 3rd prov.]
amount of the taxes levied by any local authority in respect of the property.....
- (ii) in respect of repairs,—
 - (a) where the property is in the occupation of the [s. 9 (1), (i), part]
owner,.....a sum equal to one-sixth of the annual value ;
 - (b) where the property is let to a tenant and the owner has undertaken to bear the cost of re- [s. 9 (1) (i), part]
pairs, a sum equal to one-sixth of the reduced annual value ;
- (iii) where the property is in the occupation of a tenant who has undertaken to bear the cost of re- [s. 9 (1) (ii) main para.]
pairs—
 - (a) the difference between the reduced annual value and the amount of rent payable for a year by the tenant, or
 - (b) one-sixth of such value,
whichever is less;
- (iv) the amount of any annual premium paid to insure [s. 9 (1)(iii)]
the property against risk of damage or destruction ;
- (v) where the property is subject to a mortgage or other [s. 9 (1) (iv) part]
capital charge, the amount of any interest on such mortgage or charge ;
- (vi) where the property is subject to an annual charge: [s. 9 (1) (iv), part]
not being a capital charge, the amount of such charge ;
- (vii) where the property is subject to a ground rent. [s. 9 (1) (iv) part]
the amount of such ground rent ;
- (viii) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital ;

Clauses 24-27

- [s 9 (1) (v)] (ix) any sums paid on account of land revenue in respect of the property,
- [s 9 (1) (vi)] (x) amounts spent to collect the rents from the property, not exceeding six per cent of the reduced annual value of the property,
- [s 9 (1) (vii)] (xi) where the property is let and was vacant during a part of the year, that part of the reduced annual value which is proportionate to the period during which the property is wholly unoccupied or, where the property is let out in parts, that portion of the reduced annual value appropriate to any vacant part, which is proportionate to the period during which such part is wholly unoccupied;
- [New Granted by notification No 878F dated 21 3 1922, item 38] (xii) such amount, in respect of rent from property let to a tenant which the assessee cannot realise, as may be prescribed.

Explanation—In this sub-section, "reduced annual value" means the annual value as reduced by one-half of the total amount of taxes levied by any local authority in respect of the property

- [s 9 (2), 2nd prov so last line] (2) The total amount deductible under sub-section (1) in respect of property of the nature referred to in section 23(4) [sub section in section defining annual value, relating to residential house not occupied] shall not exceed the annual value of the property as determined under section 23 [section for annual value]

Sect on 25 Amounts not deductible [s 9 (1) (v), prov so] Notwithstanding anything contained in section 24 [section regarding deductions], the following amounts shall not be deducted in computing the income chargeable under the head "Income from house property"—

any annual charge or interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1st day of April, 1938), on which tax has not been paid or deducted under section 202 or 204 [18] and in respect of which there is no person in India who may be treated as an agent under section 173 [43]

Section 26 1 property owned by co-owners [s 9 (3)] Where property consisting of buildings or buildings and lands appurtenant thereto is owned by two or more persons and their respective shares are definite and ascertainable such persons shall not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with sections 22 to 25 [section re computation] shall be included in his total income

Sect on 27 Interpretation [s 9 (4) (a)] For the purposes of sections 22 to 26 [sections regarding income from house property]

- (1) the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate;

Clauses 27-28

- (ii) a member of a co-operative society to whom a building or part thereof built by the society is allotted or leased under a house building scheme of the society shall be deemed to be the owner of that building or part thereof; [s.9(4)(b)]
- (iii)“annual charge” means a charge to secure an annual liability, but does not include any tax in respect of property or income from property imposed by a local authority, or a State Government or the Central Government; [s. 9 (1), Explan. below cl. (vii)]
- (iv) “capital charge” means a charge to secure the discharge of a liability of a capital nature; [New]
- (v) taxes levied by a local authority in respect of any property shall be deemed to include service taxes levied by the local authority in respect of the property. [s. 9 (4) (c)]

D—Profits and gains of business, profession or vocation

The following income shall be chargeable to income-tax under the head “Profits and gains of business, profession or vocation”—

- (i) the profits and gains of any business, profession or vocation which was carried on by the assessee at any time during the previous year; [Section 28. profits and gains of business, profession or vocation. [s. 10 (1), part]]
- (ii) any compensation or other payment due to or received by,— [s. 10 (5A); opening line and last para, earlier half]
- (a) a managing agent of an Indian company, at or in connection with the termination or modification of his managing agency agreement with the company; [s.10(5A)(a)]
- (b) a manager of an Indian company at or in connection with the termination of his office or modification of the terms and conditions relating thereto; [s.10(5A)(b)]
- (c) any person, by whatever name called, managing the whole or substantially the whole affairs of any other company in India, at or in connection with the termination of his office or the modification of the terms and conditions relating thereto; [s. 10(5A)(c)]
- (d) any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of the agency or the modification of the terms and conditions relating thereto; [s.10(5A)(d)]
- (iii) income derived by a trade, professional or similar association from specific services performed for its members for remuneration definitely related to those services..... [s. 10 (6)]

Clauses 28-30

New] *Explanation 1—The profits and gains of business shall include the profits and gains of managing agency*

s 24(1), Ex
plan. 1] *Explanation 2—Where speculative transactions carried on by an assessee are of such a nature as to constitute a business, the business (hereinafter referred to as 'speculation business') shall be deemed to be distinct and separate from any other business*

Section 29
Provisions
applicable
[New] *The income of an assessee referred to in section 28 (section 10(1) part embodied in main section for income from business] shall be computed in accordance with the provisions of the following sections—*

Section 30—Rent, repairs and insurance for buildings

Section 31—Repairs and insurance of machinery, plant and furniture

Section 32—Depreciation

Section 33—Development rebate

Section 34—Conditions for depreciation allowance and development rebate

Section 35—Expenditure on scientific research

Section 36—Other deductions—

Insurance of stocks or stores

Bonus or commission to employees

Interest

Contributions to certain funds for employees' benefit

Animals

Bad debts

Section 37—General

Section 38—Building etc partly used for business etc or not exclusively so used.

Section 39—Managing agency

Section 40—Amounts not deductible

Section 41—Profits chargeable to tax

Section 42—Interpretation

Section 43—Residences of employees

Section 30
Rent repairs
and insurance
for buildings] *In respect of rent, repairs and insurance for buildings, the following deductions shall be allowed—*

(a) in respect of any premises used for the purposes of the business, profession or vocation—

(i) where the premises are occupied by the assessee as a tenant—

(a) the rent paid for such premises and

[s 10(2)(i),
without the
proviso]

Clauses 30-32

(b) if he has undertaken to bear the cost of..... [s.10(2)(ii),
repairs to the premises, the amount paid on without the
account of such repairs; proviso]

(ii) where the premises, being a building, are occu- [s.10(2)(v),
pied by the assessee otherwise than as a tenant, part, for
the amount paid by him on account of current buildings]
repairs to the premises;

(b) any sums paid on account of land revenue, local [s.10(2)(ix)
rates or municipal taxes ;..... ca.lier part]

(c) the amount of any premium paid in res- [s.10(2)(iv)
pect of insurance against risk of damage or destruc- Part, for
tion of the premises, being a building buildings]

*In respect of machinery, plant or furniture used for the purposes of the business, profession or vocation the fol- Section 31.
lowing deductions shall be allowed— Repairs and
insurance
machinery
plant and
furniture.*

(i) the amount paid on account of current repairs thereto ; [s.10(2)(v),
part for
machinery
etc.]

(ii) the amount of any premium paid in res- [s. 10(2)(iv),
pect of insurance against risk of damage or des- part for ma-
truction thereof. chinery etc.

(1) In respect of depreciation of buildings, machinery, Section 32.
plant or furniture owned by the assessee and used for the Depreciation.
purposes of the business, profession or vocation, the fol-
lowing deductions shall, subject to the provisions of sec-
tion 34 [section re: conditions for depreciation], be allow-
ed—

(i) in the case of ships other than ships ordinarily [s.10(2)(vi),
plying on inland waters, such percentage (for first para,
each completed month of user) on the original part]
cost thereof to the assessee as may in any case
or class of cases be prescribed ;

(ii) in the case of buildings, machinery, plant or furni- [s.10(2)(vi),
ture, other than ships covered by clause (i), such first para,
percentage (for each completed month of user) part]
on the written down value thereof as may in any
case or class of cases be prescribed ;

(iii) in the case of buildings newly erected or machi- [s.10(2)(via),
nery or plant being new which has been installed, part]
after the 31st day of March, 1948, a further sum...
equal to the amount deductible under clause (i) or
(ii), allowable for five consecutive previous years,
including the previous year of erection or installa-
tion.

*Explanation.—For the purposes of clause (iii), any [s.10(2)(via),
extra deduction for double or multiple shift working of part]
the machinery or plant admissible under clause (ii) shall
be ignored.*

Clauses 32-33

- [s 10(2)(vi), first para] (1v) in the case of any building, machinery or plant which is sold or discarded or demolished or destroyed in the previous year, the amount by which the moneys received in respect of such building machinery, or plant, together with the amount of scrap value, if any, fall short of the written down value thereof, provided such deficiency is actually written off in the books of the assessee
- [s 10(2) (v c) 1st prov]

Explanation—For the purposes of this clause the ‘moneys received’ in respect of any building, machinery or plant shall include—

- [s 10(2)(vi), 3rd prov so modified] (a) any insurance, salvage or compensation moneys received in respect thereof,
- [New] (b) where the building, machinery or plant is sold, the price for which it is sold, whether such price has been actually realised or not

- [s 10(2)(vi), prov (b) part] (2) Where, in the assessment of the assessee, (or, if the assessee is a registered firm or an unregistered firm assessed as a registered firm, in the assessment of its partners) full effect cannot be given to any allowance under clause (i) or (ii) of sub-section (1) [10(2)(vi) main para] in any previous year owing to there being no profits or gains chargeable for that previous year, or owing to the profits or gains chargeable being less than the allowance then subject to the provisions of sections 73(3) and 74(3) [Sub-section (3) of main Section re set off in business], the allowance or part of the allowance to which effect has not been given as the case may be shall be added to the amount of the allowance for depreciation for the following previous year and deemed to be part of that allowance, or if there is no such allowance for that previous year, be deemed to be the allowance for that previous year, and so on for succeeding previous years

Sect on 33 Development rebate [s 10(2)(v b) main para] In respect of a new ship acquired or new machinery or plant installed after the 31st day of March 1954 which is wholly used for the purposes of the business carried on by the assessee a sum by way of development rebate, equivalent to,—

- (i) in the case of a ship acquired after the 31st day of December, 1957 forty per cent. of the actual cost of the ship to the assessee, and
- (ii) in the case of a ship acquired before the 1st day of January, 1958, and in the case of any machinery or plant twenty five per cent of the actual cost of the ship or machinery or plant to the assessee shall subject to the provisions of section 34 [section re conditions for depreciation], be allowed as a deduction in respect of the previous year in which the ship was acquired or the machinery on plant was installed or, if the ship, machinery or

Clause 33

plant is first put to use in the immediately succeeding previous year, then in respect of that previous year.

Explanation 1.—In the case of a ship acquired or machinery or plant installed after the 31st day of December, 1957, where the total income of the assessee assessable for the assessment year relevant to the previous year in which the ship was acquired or the machinery or plant installed (the total income for this purpose being computed without making any allowance under this section) is nil or is less than the full amount of the development rebate calculated at the rate applicable thereto under this section,—

- (i) the sum to be allowed by way of development rebate for that assessment year under this section shall be only such amount as is sufficient to reduce the said total income to nil; and
- (ii) the amount of the development rebate, to the extent to which it has not been allowed as aforesaid, shall be carried forward to the following assessment year, and the development rebate to be allowed for the following assessment year shall be such amount as is sufficient to reduce the total income of the assessee assessable for that assessment year, computed in the manner aforesaid, to nil, and the balance of the development rebate, if any, still outstanding shall be carried forward to the following assessment year and so on, so however that no portion of the development rebate shall be carried forward for more than eight assessment years immediately succeeding the assessment year for which the development rebate was first allowable.

Explanation 2.—Where for any assessment year development rebate is to be allowed in accordance with the provisions of Explanation 1, in respect of ships acquired or machinery or plant installed in more than one previous year, and the total income of the assessee assessable for the assessment year relevant to that previous year (the total income for this purpose being computed without making any allowance under this section) is less than the aggregate of the amounts due to be allowed in respect of the assets aforesaid for that assessment year, the following procedure shall be followed, namely :—

- (i) the allowance under paragraph (ii) of Explanation 1 shall be made before any allowance under paragraph (i) of that Explanation is made; and
- (ii) where an allowance has to be made under paragraph (ii) of Explanation 1 in respect of amounts carried forward from more than one assessment year, the amount carried forward from an earlier assessment year shall be allowed before any amount carried forward from a later assessment year

Clause 34

Section 34
Conditions
for deprecia-
tion allowan-
ce and devel-
opment
rebate

[s 10(2) (vi)
Prov (a) and
s 10(2) (vib)
Main para(a)]

[N-w]

see rule 8] (vii)]—

(1) The deductions referred to in sub-section (1) of section 32 [s 10(2)(vi) 10(2) (via), and (vii)] shall be allowed only if the prescribed particulars have been furnished, and the deduction referred to in section 33 [s 10(2)(vib)] shall be allowed only if the particulars prescribed for the purpose of clauses (i) and (ii) of sub-section (1) of section 32 [S 10(2)(vi)] have been furnished by the assessee in respect of the ship or machinery or plant

(2) For the purposes of section 32 [10(2)(vi), (via) and (vii)]—

(i) if the buildings, machinery, plant or furniture have been used by the assessee for the purposes of his business, profession or vocation for more than a month, the deduction under section 32(1), clauses (i) (ii) and (iii), [10(2) (vi) (via)] shall be determined proportionately with reference to the complete months of user thereof by the assessee

Provided, however, that if the total period of user is less than one month it shall be deemed to be one complete month for computing the deduction proportionately.

Explanation—In the case of a seasonal factory worked by the assessee during all the working seasons of the previous year, the buildings, machinery, plant or furniture shall be deemed to have been used by the assessee throughout the period he was the owner thereof during the previous year

[s 10(2)(via),
part]

(ii) the deduction provided for by section 32(1), clause (iii) [10(2)(via)] shall be allowed only in respect of a previous year relevant for the assessment year 1958-1959,

[s 10(2) (vi)
proviso(c)]
21 of 1922

(iii) the aggregate of all deductions in respect of depreciation made under section 32(1), [10(2) (vi), (via) and (vii)] or under the Indian Income-tax Act 1922, or under any Act repealed by that Act or under the Indian Income-tax Act, 1886, shall, in no case exceed the original cost to the assessee of the buildings, machinery, plant or furniture, as the case may be,

2 of 1886

[s 10(4B),
inserted by
the Finance
Act 1958]

(iv) nothing in section 32(1)(i) or (ii) [10(2)(vi)] or 32(1)(iii) [section 10(2)(via)] shall be deemed to authorise the allowance for any previous year of any sum in respect of any building machinery, plant or furniture sold, discarded, demolished or destroyed in that year,

(3) (a) The deduction referred to in section 33 [S 10(2) (vib), main para] shall not be allowed unless—

[s 10(2)(vib)
Prov (b)
latter half]

an amount equal to seventy five per cent of the development rebate to be actually allowed is debited to the profit and loss account of the relevant previous year and credited

Clauses 34-35

to a reserve account to be utilised by the assessee during a period of ten years next following for the purposes of the business of the undertaking, except—

- (i) for distribution by way of dividends or profits; or
- (ii) for remittance outside India as profits or for the creation of any asset outside India.

Exception.—The provisions of clause (a) shall not apply where the assessee is a company, being a licensee within the meaning of the Electricity (Supply) Act, 1948, or where the ship has been acquired or the machinery or plant has been installed before the 1st day of January, 1958. [s. 10(2)(vib) prov. (b), earlier half] 54 of 1948

(b) If any ship, machinery or plant is sold or otherwise transferred by the assessee to any person other than the Government at any time before the expiry of ten years from the end of the previous year in which it was acquired or installed, any allowance made under section 33... [s. 10(2)(vib) Prov., last para]
[s. 10(2) (vib), main para] in respect of that ship, machinery or plant shall be deemed to have been wrongly made for the purposes of this Act.

(1) In respect of expenditure on scientific research, the following deductions shall be allowed— Section 35
Expenditure on scientific research
[s. 10(2)(xii)]

- (i) any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business;
- (ii) any sum paid to a scientific research association which has as its objects the undertaking of scientific research related to the class of business carried on, and which is approved for the purposes of this clause by the prescribed authority; [s. 10(2)(xiii) part]
- (iii) any sum paid to a university, college or other institution to be used for scientific research, research in social science or statistical research related to the class of business carried on, being a university, college or institution which is for the time being approved for the purposes of this clause by the prescribed authority; [s. 10(2)(xiii) part]
- (iv) in respect of any expenditure of a capital nature on scientific research related to the business carried on by the assessee, such deduction as may be admissible under the provisions of sub-section (2). [s. 10(2)(xiv) first para, earlier part]

(2) For the purposes of clause (iv) of sub-section (1),—

- (i) one-fifth of the capital expenditure incurred in any previous year shall be deducted for that previous year; and the balance of the expenditure shall be deducted in equal instalments for each of the four immediately succeeding previous years. [s. 10(2)(xiv) first para, latter part]

Clause 35

[§ 10(2)(xv)
first prov. 30] Explanation—Where any capital expenditure has been incurred before the commencement of the business, the aggregate of the expenditure so incurred within three years immediately preceding the commencement of the business shall be deemed to have been incurred in the previous year in which the business is commenced

- [§ 10(2)(xv)
2nd proviso
(a) opening
lines]
- (ii) notwithstanding anything contained in clause (i) where an asset representing expenditure of a capital nature ceases to be used in a previous year for scientific research related to the business and the value of the asset at the time of the cessation, together with the aggregate of deductions already allowed under clause (i) falls short of the said expenditure then—
- [§ 10(2)(xiv)
2nd prov (a)
(i)] (a) there shall be allowed a deduction for that previous year of an amount equal to such deficiency and
- [§ 10(2)(xiv)
2nd proviso
(a) (i) modified]
- (b) no deduction shall be allowed under that clause for that previous year or for any subsequent previous year,
- [§ 10(2)(xv)
2nd proviso
(b)] (iii) if the asset mentioned in clause (ii) is sold without having been used for other purposes in the year of cessation the sale price shall be taken to be the value of the asset at the time of the cessation and if the asset is sold without having been used for other purposes in a previous year subsequent to the year of cessation and the sale price falls short of the value of the asset taken into account at the time of cessation an amount equal to the deficiency shall be allowed as a deduction for the previous year in which the sale took place,
- [§ 10(2)(xiv)
2nd prov (d)] (iv) where a deduction is allowed for any previous year under this section in respect of expenditure represented wholly or partly by an asset no deduction shall be allowed under section 32(1) clauses (i) (ii) and (iv) [10(2)(vi) or (vii) i.e. section authorising depreciation allowance] for the same previous year in respect of that asset
- [§ 10(2)(xiv)
2nd proviso
(c) earlier part]
- (v) where the asset is used in the business after it ceases to be used for scientific research related to that business depreciation shall be admissible under section 32(1) clauses (i) (ii) and (iv) [10(2)(vi) and (vii) i.e. section authorising depreciation allowance]
- [§ 10(2)(xv)
2nd proviso
(g)] (3) If any question arises under this section as to whether and if so to what extent any activity constitutes or constituted or any asset is or was being used for scientific research the Central Board of Revenue shall refer the question to the prescribed authority whose decision shall be final
- [§ 10(2)(xiv)
2nd proviso
(f) part]
- (4) The provisions of sub-section (2) of section 32 [Section re depreciation] shall apply in relation to deductions allowable under clause (iv) of sub-section (1) as they

Clauses 35-36

apply in relation to deductions allowable in respect of depreciation.

The deductions provided for in the following clauses shall also be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28 [main section for income from business]—

(1) *the amount of any premium paid in respect of insurance against risk of damage or destruction of..... stocks or stores used for the purposes of the business, profession or vocation.....;*

Section 36
Other deductions.

Insurance of stocks or stores.
[s. 10(2)(iv), part for stock etc.]

(2) *any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission, in either of the following cases, namely—*

Bonus or commission to employees.
[s. 10(2)(x), main para]

(i) *.....where the amount of the bonus or commission is reasonable with reference to—*

[s. 10(2)(x), proviso]

(a) *the pay of the employee and the conditions of his service;*

(b) *the profits of the business, profession or vocation for the previous year in question, and*

(c) *the general practice in, similar businesses, professions or vocations; or*

(ii) *where such payment is in pursuance of the award of an industrial or other tribunal constituted under any law for the settlement of industrial disputes;*

[New]

(3) *..... the amount of the interest paid in respect of capital borrowed for the purposes of the business, profession or vocation.*

Interest
[s. 10(2)(iii), m. in part]

*Explanation.—*Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies which fulfil such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause.

[s. 10(2)(iii), Expln.]

(4) (a) *any sum paid by the assessee as an employer by way of contribution towards a recognised provident fund or an approved superannuation fund, to the extent provided in section 293 [New Section in chapter on Recognised Provident Funds re : allowing deduction for employer's contribution] or section 310 [58R, main para, part re : deduction for employer's contribution] as the case may be;*

Contributions to certain funds for employees' benefit
[New]

(b) *any sum paid by the assessee as employer by way of contribution towards any other fund created by him for the exclusive benefit of his employees under an irrevocable trust;*

(5) *in respect of animals which have been used for the purposes of the business, profession or vocation otherwise than as stock-in-trade and have died or become permanently*

Animals
[s. 10(2)(viii)]

Clauses 36-38

useless for such purposes, the difference between the original cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses or animals,

Bad debts [s 10(2)(xi), main para] (6) debts, or parts thereof, that are established to have become bad debts in the previous year, provided—

(1) such debts or parts of debts—

(a) have been taken into account in computing the income of the assessee of that previous year or of an earlier previous year, or

(b) represent money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee, and

[Last words of s 10(2)(xi), main para] (11) such debts or parts of debts have been written off as irrecoverable in the accounts of the assessee for that previous year :

[s 10(2)(xi), proviso, latter half] Provided that if the amount ultimately recovered on any such debt or part of debt is less than the difference between the debt or part and the amount so deducted, the deficiency shall be deductible for the previous year in which the ultimate recovery is made .

Provided further that any such debt or part of debt as is referred to in sub-clause (1) may be deducted if it has already been written off as irrecoverable in the accounts of an earlier previous year but the Income-tax Officer had not allowed it to be deducted on the ground that it had not been established to have become a bad debt in that year.

Section 37 General [s 10(2)(xv)] Any expenditure (not being expenditure of the nature described in sections 30 to 36 [all other sections re deductions] and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purpose of the business, profession or vocation shall be allowed in computing income chargeable under the head "Profits and gains of business, profession or vocation"

Section 38 Building etc. partially used for business etc. or not exclusively so used (1) Where any substantial part of any premises is used as a dwelling house by the assessee, the deduction under section 30(a)(1) [10(2)(i) and (ii)] shall be such sum as the Income-tax Officer may determine, having regard—

[s 10(2)(i), proviso] (a) in a case under section 30(a)(i)(a) [10(2)(i)] to the proportionate annual value of the part used for the purposes of the business, profession or vocation, or

[s 10(2)(ii), proviso] (b) in a case under section 30(a)(i)(b) [10(2)(ii)], to the part of the premises used for the purposes of the business, profession or vocation.

Clauses 38-40

(2) *Where only a part of any premises is used for the purposes of the business, profession or vocation, the deduction under section 30, clause (b) [10(2)(ix), earlier portion] shall be such sum as the Income-tax Officer may determine having regard to the part so used.* [s. 10(2)(ix), latter portion]

(3) *Where any building, machinery, plant or furniture is not exclusively used for the purposes of the business, profession or vocation, the deductions under section 30(a)(ii), 30(c), 31(i) and 31(ii), 32(1), clauses (i) (ii) and (iv) and 36 clause (1) [S. 10(2) (iv), (v), (vi) or (vii)] shall be restricted to a fair proportional part thereof which the Income-tax Officer may determine having regard to the user of such building, machinery, plant or furniture for the purposes of the business, profession or vocation.* [s. 10(3)]

Where a managing agent of a company is liable under an agreement made for adequate consideration to share managing agency commission with a third party or parties, the said agent and the said party or parties shall file a declaration showing the proportion in which such commission is shared between them, and on proof to the satisfaction of the Income-tax Officer of the facts contained in such declaration such agent and each such party shall be chargeable only on the share to which such agent or party is entitled under the agreement. Section 29
Managing
agency
commission
[s. 12A]

Notwithstanding anything to the contrary in sections 30 to 39, [10(2)], the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business, profession or vocation" Section 40
Amounts not
deductible.

(a) *in the case of any assessee—*

(i)any interest chargeable under this Act which is payable *outside India* (not being interest on a loan issued for public subscription before the 1st day of April, 1938),..... on which tax has not been paid or deducted under section 202 or 204 [18] and in respect of which there is *no person in India who may be treated as an agent under section 173* [43];

s. 10(2) (iii)
proviso, part

(ii)any sum paid on account of any cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion of or otherwise on the basis of, any such profits or gains;

s. 10(4) first
para.

(iii) any..... payment which is chargeable under the head "Salaries", if it is payable without *India* and if the tax has not been paid thereon *on assessment* nor deducted therefrom under section 201. [s.18] nor recovered under section 209. [s.8(7)]; [s. 10(4) (a)]

Clauses 40-41

- [s 10(4) (c)] (iv) any payment to a provident or other fund established for the benefit of employees of the assessee, unless the assessee has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are chargeable to tax under the head "Salaries",
- [s 10(4) (b)] (b) in the case of any firm, any payment of interest, salary, commission or remuneration, made by the firm to any partner of the firm,
- [s 10(4A)(a)] (c) in the case of any company—
- (i) any expenditure which results directly or indirectly in the provision of any remuneration or benefit or amenity to a director or a person who has a substantial interest in the company within the meaning of section 2 clause (20), Explanation [s 2(6C) (iii)],
- (ii) any expenditure or allowance in respect of any assets of the company used by any person referred to in sub-clause (i) either wholly or partly for his own purposes or benefit,
- if in the opinion of the Income-tax Officer any such expenditure or allowance as is mentioned in sub-clauses (i) and (ii) is excessive or unreasonable having regard to the legitimate business needs of the company and the benefit derived by or accruing to it therefrom
- [s 10 (4A) Expl] (4A) Explanation The provisions of this clause [Section 10(4A)] shall apply notwithstanding that any amount disallowed under this clause is included in the total income of any person referred to in sub-clause (i)
- [s 8 Expl last lines of clauses (a) & (b)] (d) in the case of a banking company, the amounts which have been allowed as a deduction in computing its income chargeable to income tax under the head "Interest on securities" under the provisions of section 20(1) [8 Expln(1) (b)]
- Sec 102 42
Profits chargeable to tax
Amounts received in respect of loss etc
- [s 10(2A)] (i) Where for the purposes of computing income under the head "Profits and gains of business, profession or vocation" an allowance or deduction has been made in the assessment for any year in respect of any loss, expenditure or trading liability incurred by the assessee and, subsequently during any previous year the assessee has received whether in cash or in any other manner whatsoever any amount in respect of such loss or expenditure or has obtained some benefit in respect of such trading liability by way of remission or cessation thereof the amount received by him or the value of the benefit accruing to him shall be chargeable to income tax as the income of the business, profession or vocation of that previous year

Clause 41

(2) Where any building, machinery or plant which is owned by the assessee and which was or has been used for the purposes of business, profession or vocation, is sold, discarded, demolished or destroyed in the previous year, and the moneys received in respect of such building, machinery or plant, as the case may be, together with the amount of scrap value, if any, exceed the written down value, so much of the excess as does not exceed the difference between the original cost and the written down value.....shall be chargeable to income-tax as income of the business, profession or vocation of the previous year in which the moneys are received.

Profits on sale of depreciable assets.

[s. 10(2)(vii)-2nd proviso, part, and 4th proviso, part simplified]

Explanation 1—For the purposes of this sub-section, the expression “moneys received” in respect of any building, machinery or plant has the same meaning as in section 32(1) (iv) [sec. re : depreciation-clause for loss on sale]

[s. 10(2)(vii) 4th proviso part.]

Explanation 2.—The provisions of this sub-section shall apply notwithstanding that the business, profession, or vocation for the purposes of which the building, machinery or plant was being used is no longer in existence at the time when the building, machinery or plant is sold, discarded, demolished or destroyed.

[s. 10(2)(vii), 2nd proviso words “whether..... thereof”]

Explanation 3.—For the purposes of this sub-section, the original cost of a building, the written down value of which is determined in accordance with section 42 clause (7) (b), proviso [Section 10(5) (b), 1st proviso] shall be deemed to be the written down value so determined as at the date of its being brought into use for the purposes of the business, profession or vocation

[s. 10(2)(vii) 5th proviso.]

(3) Where an asset representing expenditure of a capital nature on scientific research within the meaning of section 35(1) (iv) read with section 42 clause (5) [Section 10(2) (xiv)] is sold whether during the continuance of the business or after the cessation thereof without having been used for other purposes and the proceeds of the sale together with the total amount of the deductions made under Section 35(2) (i) [s. 10(2) (xiv) first para, latter part] exceed the amount of the capital expenditure, the excess or the amount of the deductions so made, whichever is the less, shall be chargeable to income-tax as income of the business, profession or vocation of the previous year in which the sale took place.

Profits on sale of scientific research assets.

[s. 10(2) (xiv) 2nd proviso (c).]

(4) Where a deduction has been allowed in respect of a bad debt or part of debt under the provisions of section 36 clause (6) [s. 10(2) (xi) first para] then if the amount ultimately recovered on any such debt or part is greater than the difference between the debt or part of debt and the amount so allowed, the excess shall be chargeable to income-tax as income of the business, profession or vocation of the previous year in which it is recovered.

[s. 10(2) (xi), proviso earlier half.]

Clause 42

Sect on 42 interpretation In sections 28 to 41 [all sections incorporating any part of section 10] and in this section, unless the context otherwise requires,—

Actual cost (1) "actual cost" means the actual cost of the assets to the assessee reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by Government or by any public or local authority

[S 10(5) Expln a' the end earlier part] Explanation 1—Where an asset is used in the business after it ceases to be used for scientific research related to that business, and a deduction has to be made under section 32(1) clause (i) (ii) or (iv) [Section 10(2) (vi) or (vii)] in respect of that asset, the actual cost of the asset to the assessee shall be the actual cost to the assessee as reduced by the amount of any deduction allowed under section 35(1) (iv) [10(2) (xiv)] or under any corresponding provision of the Indian Income tax Act, 1922

11 of 1922 [S 10(5) (c)] Explanation 2—Where an asset is acquired by the assessee by way of gift or inheritance, the actual cost of the asset to the assessee shall be the written down value thereof as in the case of the previous owner for the previous year in which the asset is so acquired or the market value thereof on the date of such acquisition, whichever is the less

[S 10(5) (a), 1st proviso] Explanation 3— Where, before the date of acquisition by the assessee, the assets were at any time used by any other person for the purposes of his business, profession or vocation and the Income-tax Officer is satisfied that the main purpose of the transfer of such assets, directly or indirectly to the assessee, was the reduction of a liability to income-tax (by claiming depreciation with reference to an enhanced cost) the actual cost to the assessee shall be such an amount as the Income-tax Officer may, with the previous approval of the Inspecting Assistant Commissioner, determine having regard to all the circumstances of the case

[S 10(5) (a) 2nd prov so] Explanation 4— Where assets which had once belonged to the assessee and had been used by him for the purposes of his business, profession or vocation and thereafter ceased to be his property by reason of transfer or otherwise, are re-acquired by him, the actual cost to the assessee shall be the actual cost to him when he first acquired the assets less all depreciation actually allowed to him under this Act or under the Indian Income-tax Act, 1922 or under any Act repealed by that Act or under executive orders issued when the Indian Income-tax Act, 1886, was in force

11 of 1922 2 of 1886. [S 12B(1), 2nd proviso latter half, part] Explanation 5—When any capital asset is transferred by a company to its subsidiary company, then, if the conditions of section 47(iii) [section 12B(1), 2nd proviso, earlier half] are satisfied, the actual cost of the transferred capital asset to the subsidiary company shall be taken

Clause 42

to be the same as it would have been if the parent company had continued to hold the capital asset for the purposes of its business.

(2) "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under the head "*Profits and gains of business, profession or vocation*"; 'paid'
[S. 10(5)
First para,
part.]

(3) "plant" includes ships, vehicles, books, scientific apparatus and surgical equipment purchased for the purposes of the business, profession or vocation; "plant"
[S. 10(5)
First para,
part.]

(4) "received" means received according to the method of accounting upon the basis of which the profits or gains are computed under the head "*Profits and gains of business, profession or vocation*"; "Received"
[New.]

(5) (i) "scientific research" means any activities in the fields of natural or applied science for the extension of knowledge; "Scientific
research"
[S. 10(2) (xiv)
Expln. (i).]

(ii) references to expenditure incurred on scientific research.....include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of, scientific research, but do not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research; [S. 10(2)(xiv)
Expln. (ii).]

(iii) references to scientific research related to a business or class of business include— [S. 10(2)(xiv)
Expln. (iii).]

(a) any scientific research which may lead to or facilitate an extension of that business or, as the case may be, all businesses of that class;

(b) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business or, as the case may be, all businesses of that class;

(6)....."speculative transaction" means a transaction in which a contract for purchase and sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips; [S. 24(1)
Expln. (2).]

Provided that for the purposes of this clause—

(a) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him; or

Clause 42

(b) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations, or

(c) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business as such member,

shall not be deemed to be a speculative transaction;

(7) "written down value" means—

(a) in the case of assets acquired in the previous year, the actual cost to the assessee,

(b) in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation actually allowed to him under this Act, or under the Indian Income-tax Act, 1922, or any Act repealed by that Act, or under executive orders issued when the Indian Income-tax Act, 1886 was in force

Provided that in the case of a building previously the property of the assessee and brought into use for the purposes of the business profession or vocation after the day of February, 1946, "written down value" means the actual cost to the assessee reduced by an amount equal to the depreciation calculated at the rate in force on that date that would have been allowable had the building been used for the aforesaid purposes since the date of its acquisition by the assessee and had the provisions of this Act relating to the allowance for depreciation been in force on and from the date of acquisition

Explanation 1—When in a case of succession in business, profession or vocation, an assessment is made on the successor under section 180(2) [Section 26(2) proviso], the written down value of any asset shall be the amount which would have been taken as its written down value if the assessment had been made directly on the person succeeded to

Explanation 2—When any capital asset is transferred by a company to its subsidiary company, then, if the conditions of section 47(iii) [section 12B(1), 2nd proviso, earlier half] are satisfied, the written down value of the transferred capital asset to the subsidiary company shall be taken to be the same as it would have been if the parent company had continued to hold the capital asset for the purposes of its business

Explanation 3—Any allowance in respect of any depreciation carried forward under Chapter VI [chapter on Aggregation and set off] shall be deemed to be depreciation "actually allowed"

"Written down value"
[s 10(5) (a),
main part]

[s 10(5) (b),
main part]

11 of 1922

2 of 1886

[s 10(5) (b)
1st proviso]

[s 10(5) (b),
2nd proviso]

[s 12B (1),
2nd proviso
later half
part]

[s 10(5)
Expln latter
half]

Clauses 43-47

Buildings provided by the assessee for the residential accommodation of his employees engaged in the business, profession or vocation, where the occupation by the employees of such building is subservient to and necessary for the performance of their duties, shall, for the purposes of computation of income chargeable under the head "Profits and gains of business, profession or vocation", be deemed to be buildings occupied by the assessee for the purposes of his business, profession or vocation.

Section 43
Residences of
employees.
[New]

Insurance business

Notwithstanding anything to the contrary contained in the provisions of this Act relating to the computation of income chargeable under the head "Interest on securities", "Income from house property" or "Income from other sources", or in section 207 [18(5), main para, part regarding credit for tax deducted at source] or in sections 28 to 43 [all earlier sections regarding Profits and gains of business], the profits and gains of any business of insurance, including any such business carried on by a mutual insurance association or by a co-operative society, shall be computed in accordance with the provisions of the First Schedule [Schedule, Rules 1 to 8].

Section 44,
insurance
business.
[s. 10(7) and
Schedule,
rule 9.]

E—Capital gains

.....Any profits or gains arising from the sale, exchange, relinquishment or transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections 55 and 56 [12B(4)] be chargeable to income-tax under the head 'Capital gains'.

Section 45
Capital gains
[s. 12 B (1)
main para
earlier part.]

The income chargeable to income-tax under the head "Capital gains" shall be deemed to be the income of the previous year in which the sale, exchange, relinquishment or transfer took place.

Section 46
Previous year
[s. 12B(1)
main para
latter part.]

For the purposes of section 45 [12B(1) main para], the following shall not be treated as a sale, exchange, relinquishment or transfer of capital assets—

Section 47
ransactions
not regarded
as sale etc.

- (i) any distribution of capital assets on the total or partial partition of a Hindu undivided family; [s. 12B(1) 1st. Prov. part.]
- (ii) any transfer of a capital asset under a..... gift:..... or will; [s. 12B(1), 1st Prov. part.]
- (iii) any transfer of a capital asset by a company to its subsidiary company if— [s. 12B(1) 2nd Prov. earlier part.]
 - (a) the parent company or its nominees hold the whole of the share capital of the subsidiary company, and
 - (b) the subsidiary company is an Indian company and is a resident.

Clauses 48-50

Section 48 The income chargeable under the head "Capital gains" shall be computed by deducting from the full value of the consideration for which the sale, exchange, relinquishment or transfer of the capital asset is made, the following amounts, namely—

Mode of computation and deductions
[s 12B(2), opening lines]
[s 12B(2) (i)]

(i) expenditure incurred wholly and exclusively in connection with such sale, exchange, relinquishment or transfer,

[s 12B(2) (ii) part]

(ii) the statutory cost of the capital asset, as determined in accordance with the provisions hereinafter contained

Section 49
Statutory cost with reference to modes of acquisition
[New]

Where the capital asset became the property of the assessee by any of the following modes, the statutory cost of the asset shall be determined in accordance with the provisions of sections 50 and 51 [next two sections following, dealing with determination of statutory cost]—

(i) under a purchase, exchange, relinquishment or other transfer,

(ii) on any distribution of capital assets on the total or partial partition of a Hindu undivided family,

(iii) under a gift or will,

(iv) (a) by succession, inheritance or devolution, or

(b) on any distribution of capital assets on the dissolution of a firm or other association of persons, or

(c) on any distribution of capital assets on the liquidation of a company, or

(d) under a transfer on revocable or irrevocable trust

Section 50
Determination of statutory cost

The statutory cost of an asset shall be determined as follows—

(1) Where the capital asset became the property of the assessee by any of the modes specified in section 49(1) [clause (1) of section for statutory cost with reference to modes of acquisition], the statutory cost of the asset shall be—

[s 12 B(2) (i) part]

(a) the cost of acquisition of the asset to the assessee, as increased by the cost of any improvements made thereto, incurred and borne by the assessee, or

[s 12B(2), 3rd part] Prov

(b) where the capital asset became the property of the assessee before the 1st day of January, 1954 then, at the option of the assessee, the fair market value of the asset on the 1st day of January 1954 as increased by the cost of any improvements made thereto on or after the 1st day of January, 1954 incurred and borne by the assessee

Clause 50

(2) Where the capital asset became the property of the assessee by the mode specified in section 49 (ii) [clause (ii) of section re: statutory cost with reference to modes of acquisition], the statutory cost of the asset shall be determined as follows—

(i) where the capital asset became the property of the assessee before the 1st day of April, 1956, the statutory cost of the asset shall be the highest of the following—

(a) the cost of acquisition of the asset to the previous owner thereof, as increased by the cost of any improvements made thereto after its acquisition by the previous owner or the assessee, incurred and borne by the previous owner or the assessee, as the case may be; or

(b)the fair market value of the.....asset on the date on which it became the property of the assessee....., as increased by the cost of any improvements made thereto after its acquisition by the assessee, incurred and borne by the assessee; or

(c) where the capital asset became the property of the previous owner.....before the 1st day of January, 1954, the fair market value of the asset on the 1st day of January, 1954, as increased by the cost of any improvements made thereto on or after the 1st day of January, 1954, by the previous owner or the assessee, incurred and borne by the previous owner or the assessee, as the case may be;

(ii) where the capital asset became the property of the assessee on or after the 1st day of April, 1956,the statutory cost of the asset shall be the fair market value of the asset on the date of the partition, as increased by the cost of any improvements made thereto on or after the date of the partition, incurred and borne by the assessee.

(3) Where the capital asset became the property of the assessee by any of the modes specified in section 49 (iii) [clause (iii) of section regarding statutory cost with reference to mode of acquisition], the statutory cost of the asset shall be determined as follows :—

(i) where the capital asset became the property of the assessee before the 1st day of April, 1956, its statutory cost shall be determined in accordance with the provisions of clause (i) of sub-section (2);

(ii) where the capital asset became the property of the assessee on or after the 1st day of April 1956, the statutory cost of the asset shall be—

[s 12B (3),
main para
earlier half,
part]

- (a) the cost of acquisition of the asset to the previous owner thereof, as increased by the cost of any improvements made thereto after its acquisition by the previous owner or the assessee, incurred and borne by the previous owner or the assessee, as the case may be, or

[s 12B (2)
3rd prov
part]

- (b) where the asset became the property of the previous owner before the 1st day of January, 1954, then, at the option of the assessee, the fair market value of the asset on the 1st day of January 1954, as increased by the cost of any improvements made thereto on or after the 1st day of January, 1954, by the previous owner or the assessee, incurred and borne by the previous owner or the assessee, as the case may be.

(4) Where the capital asset became the property of the assessee, whether before or after the 1st day of January, 1954 by any of the modes specified in section 49 (iv) [clause (iv) of section re statutory cost and mode of acquisition], the statutory cost of the capital asset shall be—

[s 12B (3),
main para
earlier half,
part]

- (a) the cost of acquisition of the asset to the previous owner thereof, as increased by the cost of any improvements made thereto after its acquisition by the previous owner or the assessee, incurred and borne by the previous owner or the assessee, as the case may be, or

[s 12B (2),
3rd prov
part]

- (b) where the asset became the property of the previous owner before the 1st day of January, 1954, then, at the option of the assessee, the fair market value of the asset on the 1st day of January, 1954 as increased by the cost of any improvements made thereto on or after the 1st day of January, 1954, by the previous owner or the assessee, incurred and borne by the previous owner or the assessee, as the case may be

[s 12B (3)
main para
latter half]

Explanation—Where the cost of acquisition of a capital asset to the previous owner cannot be ascertained, the fair market value on the date on which the capital asset became the property of the previous owner shall be deemed to be the cost of acquisition thereof to the previous owner for the purposes of this section

Sect on 51
Special prov
s on for
computing
statutory cost
in the case of
depreciable
assets

Where the capital asset is an asset in respect of which a deduction on account of depreciation has been obtained by the assessee in any previous year either under this Act or under the Indian Income-tax Act, 1922, or any Act repealed by that Act, or under executive orders issued when the Indian Income-tax Act, 1886, was in force the provisions of section 50 [preceding section regarding determi-

Clauses 51—55

nation of statutory cost] shall be subject to the following modifications:—

11 of 1922
2 of 1886

(1) The written down value, as defined in section 42 clause (7) [s. 10(5)], of the asset, as adjusted, shall be taken as the statutory cost of the asset. [s. 12B (2), 2nd proviso, part]

(2) Where under any provision of section 50.....[preceding section regarding computation of statutory cost] the fair market value of the asset on the 1st day of January, 1954, is to be taken into account at the option of the assessee, then, the statutory cost of the asset shall, at the option of the assessee, be the fair market value of the asset on the said date, as reduced by the amount of depreciation, if any, allowed to the assessee after the said date, and as adjusted. [s. 12 B (2), proviso, part]

.....Where any capital asset was on any previous occasion the subject of negotiations for its sale, exchange, relinquishment or transfer, any option or other money received and retained by the assessee in respect of such negotiations shall be deducted from the cost of acquisition or the written down value or the fair market value, as the case may be, in computing the statutory cost. Section 52
Opt on money received.
[s. 12 B (2), 4th proviso]

The full value of the consideration for the exchange of a capital asset referred to in section 48 [section re: computation of income] shall be taken to be the fair market value, on the date of the exchange, of the asset obtained by the assessee in exchange,— Section 53.
Cons. dera- tion for ex- change.
[New]

(a) as increased by the value of any other consideration obtained by the assessee, and

(b) as diminished by the value of any consideration in addition to the capital asset, given by the assessee.

Where the Income-tax Officer is satisfied that the consideration recited in any deed of sale, exchange, relinquishment or transfer of a capital asset is low and that it was so recited with the object of avoidance or reduction of the liability of the assessee under section 45 [section re: chargeability], the full value of the consideration referred to in section 48 [section re: computation of capital gains] shall, with the prior approval of the Inspecting Assistant Commissioner....., be taken to be the fair market value of the capital asset on the date on which the sale, exchange, relinquishment or transfer took place. Section 54.
Cons. dera- tion for sale, etc. how determined in cases of understate- ment.
[s. 12 B (2), 1st prov.]

Notwithstanding anything contained in section 45 [S 12B(1) main para], where a capital gain arises from the sale, exchange or transfer of one or more capital assets, being buildings or lands appurtenant thereto the income of which is chargeable under the head "Income from house (a)" Section 55
Capital gains exempt from tax.
[s. 12 B (4) (a)]

Clauses 55-57

property", and the full aggregate value of the consideration for which the sale, exchange, or transfer is made does not exceed the sum of twenty-five thousand rupees, the capital gain shall not be included in the total income of the assessee.

Provided that this section shall not apply in any case where the aggregate of the fair market values of all capital assets, being buildings or lands appurtenant thereto the income of which is chargeable under the head "Income from house property", owned by the assessee immediately before the sale, exchange or transfer aforesaid is made, exceeds the sum of rupees fifty thousand.

Section 55
Profit on sale
of property
used for resi-
dences

[s. 12 B (4),
(b)]

Where a capital gain arises from the sale, exchange, relinquishment or transfer of a capital asset to which the provisions of section 55 [12B(4) (a)] are not applicable, being buildings or lands appurtenant thereto the income of which is chargeable under the head 'Income from house property', which in the two years immediately preceding the date on which the sale exchange, relinquishment or transfer took place, was being used by the assessee or a parent of his mainly for the purposes of his own or the parent's own residence, and the assessee has within a period of one year before or after that date purchased a new property for the purposes of his own residence, then instead of the capital gain being charged to income-tax as income of the previous year in which the sale exchange relinquishment or transfer took place, it shall, if the assessee so elects in writing before the assessment is made, be dealt with in accordance with the following provisions of this section, that is to say,—

- (i) if the amount of the capital gain is greater than the cost of the new asset, the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 [(12B) (1), main para] as income of the previous year, or
- (ii) if the amount of the capital gain is equal to or less than the cost of the new asset the capital gain shall not be charged under section 45 [section 12B (1) main para]

Section 57
Interpreta-
tion.
[New]

[cf s. 12B (2),
and prov
latter half]

[s. 12 B (2),
(ii) para]

In sections 50 and 51 [sections re determination of statutory cost]—

- (a) "adjusted", in relation to written down value or fair market value, means diminished by any loss deducted or increased by any profit assessed, under the provisions of section 32(1) clause (iv) [s. 10 (2) (vi)—part for losses] or section 41(2) [s. 10(2) (vi)—part for profits], as the case may be,
- (b) "cost of any improvements" means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset, but does

Clauses 57—59

not include any expenditure which is deductible in computing the income chargeable under the head "Interest on securities", "Income from house property", "Profits and gains of business, profession or vocation" or "Income from other sources"; and "improvements" shall be construed accordingly.

F—Income from other sources

Section 58

(1) Income..... of every kindshall be chargeable to income-tax under the head "Income from other sources" if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E [Section 2(1)]

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following income shall be chargeable to income-tax under the head "Income from other sources", namely:—

- (i) dividends.....; Dividends
[S. 12 (1A).]
- (ii) income from machinery, plant or furniture belonging to the assessee and let on hire, if the income is not chargeable to income-tax under the head "Profits and gains of business, profession or vocation"; Hire of
machinery,
plant or
furniture.
[New]
- (iii) where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, the income from such letting of the buildings, if it is not chargeable to income-tax under the head "Profits and gains of business, profession or vocation." Lease of
buildings
inseparable
from lease of
machinery
e.c.
[New]

(1) For the purposes of inclusion in the total income of an assessee.....any dividend paid by a company whose total income is chargeable to income-tax under this Act shall be the gross amount of the dividend as determined under sub-section (2). Section 59
Grossing up
of dividends.
[S. 16 (2),
main para.
part.]

(2) Subject to the provisions of sub-section (3), the gross amount of the dividend shall be the amount of the net dividend as increased in accordance with the following formula— [S. 16 (2),
main para,
part.]

$$\text{Increase} = \frac{D \times R}{100 \text{ minus } R.}$$

In the above formula,—

- (i) "Increase" stands for the increase to be made in the amount of the net dividend;

- (ii) 'D' stands for the amount of the net dividend, and
- (iii) 'R' stands for the average rate of income-tax applicable to the company for the financial year in which the dividend is paid, credited or distributed or deemed to have been paid, credited or distributed. The rate is to be expressed as a percentage, for example, where the rate is 25 naya paise per rupee, 'R' stands for the figure 25

[S 16 (2) prov so] (3) When the fund out of which the dividend has been paid, credited or distributed or deemed to have been paid, credited or distributed includes—

- (i) any profits and gains of the company not included in its total income or
- (ii) any income of the company on which income-tax was not payable, or
- (iii) any amount attributable to any allowance made in computing the profits and gains of the company the increase to be made under sub-section (2) shall be calculated only upon such proportion of the net dividend as the said fund after deduction of the inclusions enumerated above bears to the whole of that fund

Sect on 60 Deductions The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely —

[S 12 (2) main para part] (i) in the case of dividends, any reasonable sum paid by way of commission or remuneration to a banker or any other person realising such dividend on behalf of the assessee,

[S 12 (3) & (4) part for deductions] (ii) in the case of income of the nature referred to in section 58(2) clauses (ii) and (iii) [new sub-sections regarding income from hire of machinery etc and lease of buildings inseparable from machinery, in the Section regarding chargeability], deductions so far as may be, in accordance with the provisions of sections 30(a)(i) 30(c), 31, clauses (i) and (ii), 32(1) clauses (i) (ii) and (iv), and 36 clause (1) [section 10(2)(iv) (v) (vi) and (vii) portions incorporated in draft section for deductions in income from business] and subject to the provisions of sections 34 and 38 [section 10 provisions incorporated in draft section regarding conditions for depreciation and development rebate and partial user],

[S 12 (2) main para part] (iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income

Clauses 61-62

Notwithstanding anything to the contrary contained in Section 61 section 60 [Section regarding deductions for income from other sources], the following amounts shall not be deductible in computing the income chargeable under the head "Income from other sources", namely:—

(a) in the case of any assessee—

[S. 12 (2), proviso.]

(i) any personal expenses of the assessee;

(ii) any interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1st day of April, 1938),.....on which tax has not been paid or deducted under section 202 or 204 [Sections regarding deductions of tax at source], and in respect of which there is no person in India who may be treated as an agent under section 173[section 43];

(iii) any payment which is chargeable under the head "Salaries", if it is payable without India, unless tax has been paid thereon on assessment or deducted therefrom under section 201 [18(2)] or recovered under section 209 [18(7)];

(b) in the case of a company, any expenditure or allowance of the nature referred to in section 40, clause (c) [section 10(4A)(a) and (b)], notwithstanding that the amount thereof is included in the total income of any person referred to in section 40(c)(i) [10(4A) (a)].

[S. 12 (5) part read with S. 10 (4A).]

(1) The provisions of section 41(1) [Section 10(2A)] shall apply, so far as may be, in computing the income of an assessee under section 58 [main section regarding chargeability of Income from other sources], as they apply in computing the income of an assessee under the head "Profits and gains of business, profession or vocation".

Section 62 Profits chargeable to tax. [S. 12 (5) part.]

(2) When any buildings, machinery, plant or furniture to which section 58(2), clauses (ii) and (iii) [sub-sections (4), (5) & (6)] regarding income from hire of machinery etc. and lease of building, inseparable from machinery, in the section regarding chargeability apply are sold, discarded, demolished or destroyed, the provisions of section 41(2) [Section 10(2) (vii), 2nd and 4th provisos, so far as they deal with profits] shall apply, so far as may be, in computing the income of an assessee under section 58 [Section regarding chargeability of income from other sources] as they apply in computing the income of an assessee under the head "Profits and gains of business, profession or vocation".

[S. 12 (3) & (4), part for profits.]

CHAPTER V

INCOME OF OTHER PERSONS INCLUDED IN ASSESSEES TOTAL INCOME

Section 63 All income arising to any person by virtue of a transfer
 Transfer of whether revocable or not and whether effected
 income before or after the commencement of this Act, shall, where
 [S 16 (1) (c)] there is no transfer of the assets from which the income
 (c) main para, arises be chargeable to income tax as the income of the
 earlier half] transferor and shall be included in his total income.

Section 64 All income arising to any person by virtue of a revo-
 Revocable cable transfer of assets shall be chargeable to income tax
 transfer of as the income of the transferor and shall be included in his
 asscs as total income
 [S 16 (1) (c),
 main para,
 latter half]

Section 65 (1) The provisions of section 64 [S 16(1)(c), main para,
 irrevocable latter half] shall not apply to any income—
 transfers

[S 16 (1) (c), (a) arising to any person by virtue of a transfer which
 3rd proviso, is not revocable for a period exceeding six years
 earlier half] or during the lifetime of the transferee, or, in the
 case of a transfer by way of trust, during the life-
 time of the beneficiary and

(b) from which income the transferor derives no direct
 or indirect benefit

[S 16 (1) (c) (2) Notwithstanding anything contained in sub-section
 3rd proviso (1) all income arising to any person by virtue of a transfer
 latter half] shall be chargeable to income-tax as the income of the
 transferor as and when the power to revoke the transfer
 arises, and shall then be included in his total income

Section 66 For the purposes of sections 63, 64 and 65 [section 16
 Definitions, (1)(c), main para and 3rd proviso] and of this section,—

[S 16 (1) (c) (a) a transfer shall be deemed to be revocable
 1st proviso] if—

(i) it contains any provision for the retransfer direct-
 ly or indirectly of the income or assets to the
 transferor, or

(ii) it, in any way, gives the transferor a right to
 reassume power directly or indirectly over the
 income or assets,

[S 16 (1) (c) (b) 'transfer' includes any settlement, trust, covenant,
 2nd proviso agreement or arrangement.
 part.]

Section 67 In computing the total income of any individual, being
 Husband a male there shall be included all such income as arises
 wife and directly or indirectly—
 minor child
 rem.

[S 16 (3)] (i) to his wife from the membership of the wife in a
 firm in which such individual is a partner,

(ii) to a minor child of such individual from the admis-
 sion of the minor to the benefits of partnership
 in a firm in which such individual is a partner,

Clauses 67—69

- (iii) *to his wife from assets transferred directly or indirectly to the wife by such individual otherwise than for adequate consideration or in connection with an agreement to live apart ;.....*
- (iv) *to a minor child, not being a married daughter, of such individual from assets transferred directly or indirectly to the minor child by such individual otherwise than for adequate consideration; or*
- (v) *.....to any person or association of persons.....
.....from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife, or a minor child (not being a married daughter), or both.*

CHAPTER VI

AGGREGATION OF INCOME AND SET-OFF OR CARRY FORWARD OF LOSS

Aggregation of income

In computing the total income of an assessee, there shall be included all income on which no income-tax is payable under the provisions of sections 81 to 87 [Sections relating to income on which no income-tax is payable].

Section 68
Total income
[S. 16 (1) (a)
earlier part.]

(1) In computing the total income of an assessee who is a partner of a firm,.....whether the net result of the computation of total income of the firm is a profit or a loss, his share (whether a net profit or a net loss) shall be computed as follows—

Section 69
Method of
computing
a partner's
share in the
income of the
firm.
[S. 16 (1) (b)
main para.]

- (a) *any interest, salary, commission or other remuneration paid to any partner in respect of the previous year shall be deducted from the total income of the firm, and the balance ascertained and apportioned among the partners ;*
- (b) *where the amount apportioned to the partner under clause (a) is a profit, any salary, interest, commission or other remuneration paid to the partner by the firm in respect of the previous year shall be added to that amount, and the result shall be treated as the partner's share in the income of the firm;*
- (c) *where the amount apportioned to the partner under clause (a) is a loss, any salary, interest, commission or other remuneration paid to the partner by the firm in respect of the previous year shall be adjusted against that amount, and the result shall be treated as the partner's share in the income of the firm.*

Clauses 69-73

[New] (2) A partner's share in the income of the firm, as computed under sub-section (1), shall, for the purposes of assessment, be apportioned under the various heads of income in the proportion which the income of the firm under each head bears to the total income of the firm

[New] (3) Any interest paid by a partner on capital borrowed for the purposes of investment as his capital in the firm shall, in computing his income chargeable under the head "Profits and gains of business, profession or vocation" in respect of his share in the income of the firm, be deducted from the share, but no other deduction shall be allowed in respect of the said share

[S 16 (1) (b) proviso] (4) If a partner's share in the income of the firm, as computed under this section, is a loss, such loss may be set off, or carried forward and set off, in accordance with the provisions of this Chapter

[New] Explanation—In this section, "paid" has the same meaning as is assigned to it in section 42, clause (2) [s 10(5)]

Section 70 Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not satisfactory, the sum so credited shall be deemed to be the income of the assessee and shall be chargeable to income-tax as the income of that previous year

Section 71 Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not accepted by the Income-tax Officer, the value of the investments shall be deemed to be income of the assessee of such financial year

Section 72 Set off, or carry forward and set off

Set-off of loss from one business to loss from another [New] Save as otherwise provided in this Act, where the net result for any assessment year in respect of any business, profession or vocation carried on by the assessee, computed under the head "Profits and gains of business, profession or vocation", is a loss, the assessee shall be entitled to have the amount of such loss set off against the profits and gains assessable for that assessment year from any other business, profession or vocation under the said head of income

Section 73 (1) Where in respect of any assessment year the net result of the computation under any of the heads of income mentioned in section 14 [6] other than "Capital gains" is a loss to the assessee, the assessee shall, subject to the other provisions of this Chapter, be entitled to have the amount

Clauses 73-74

of such loss set off against his income assessable for that assessment year under any other head..... except "Capital gains".

(2) Where for any assessment year the net result of the computation under the head "Profits and gains of business, profession or vocation" is a loss to the assessee, not being a loss sustained in a speculation business, and such loss has not been wholly set off in accordance with the provisions of sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee had no income under any other head, shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and.....

Carry forward and set off of business losses.
[s. 24 (2), main para, part.]

- (i)it shall be set off against the profits and gains, if any, of any business, profession or vocation carried on by him and assessable for that assessment year, provided that the business, profession or vocation for which the loss was originally computed continued to be carried on by him in the previous year relevant for that assessment year; and
- (ii) if the loss.....cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.

(3) Where any allowance or part thereof is under sub-section (2) of section 32 [section regarding depreciation] or sub-section (4) of section 35 [Section regarding scientific research expenditure] to be carried forward, effect shall first be given to the provisions of sub-section (2).

[s. 24 (2), Prov.(b) part and s. 10 (2) (xiv) 2nd Prov.(f)part.]

(4)No loss shall be.....carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

[s. 24 (2) main para part.]

(1) Any loss computed in respect of a speculation business carried on by the assessee, shall not be set off except against profits and gains, if any, of another speculation business.

Section 74. Losses in speculation business.

[s. 24 (1), 1st prov.]

(2) Where for any assessment year any loss computed in respect of a speculation business has not been wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee had no income from any other speculation business, shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—

[s. 24 (2), main para part.]

- (i)it shall be set off against the profits and gains, if any, of any speculation business carried on by him assessable for that assessment year; and
- (ii) if the loss cannot be wholly so set off; the amount of loss not so set off shall be carried forward to the following assessment year and so on.

Clauses 74-77

[s 24 (2),
Prov (b) part
and s 10 (2)
(xiv), 2nd
part] (3) In respect of allowance on account of depreciation or capital expenditure on scientific research, the provisions of sub-section (3) of section 73 [preceding section regarding set off etc in non-speculation business] shall apply in relation to speculation business as they apply in relation to any other business

s 24 (2),
main para,
part] (4) No loss shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed

Section 75
Losses under
the head
'Capital
gains'
[s 24(2A)] (1) Where in the previous year relevant for any assessment year the assessee sustains a loss under the head "Capital gains", the assessee shall, subject to the other provisions of this Chapter, be entitled to have the amount of such loss set off against his other income assessable for that assessment year under the head "Capital gains".

[s 24 (2B),
part] (2) Where in respect of any assessment year the net result of the computation under the head 'Capital gains' is a loss to the assessee, such loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year and set off against capital gains assessable for that assessment year, and if it cannot be so set off, the amount thereof not so set off shall be carried forward to the following assessment year and so on :

Provided that where the loss computed in respect of any assessee, not being a company, for any assessment year does not exceed five thousand rupees, it shall not be carried forward under this sub-section

[s 24 (2B)
part] (3) No loss shall be carried forward under sub-section (2) for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed

Section 76.
Losses of re-
gistered firms,
[s 24 (1), 2nd
proviso, latter
half] (1) Where the assessee is a registered firm, any loss which cannot be set off against other income of the firm shall be apportioned between the partners of the firm and they alone shall be entitled to have the amount of the loss set off under sections 73(1), 74(1) and 75(1) [24 (1)]

[s 24(2)
Proviso (c),
earlier part
Section 77
Losses of
unregistered
firms assessed
as registered
firms [s 24(2)
Proviso (d)] (2) Nothing contained in section 73(2), 74(2) or 75(2) [s 24(2) main para and 24(2B)] shall entitle any assessee being a registered firm to have carried forward and set off its loss under the provisions of section 73(2) or 74(2) [24(2) main para] or section 75(2) [24(2B)]

In the case of an unregistered firm assessed under the provisions of section 190(b) [23(5)(b)] in respect of any assessment year, its losses for that assessment year shall be dealt with as if it were a registered firm

Clauses 78—82

(1).....Where the assessee is an unregistered firm which has not been assessed as a registered firm under the provisions of section 190(b) [23(5)(b)] any.....loss of the firm shall be set off only against the income..... of the firm. Section 78
Losses of unregistered firms or its partners.

(2).....Where the assessee is a partner of an unregistered firm which has not been assessed as a registered firm under the provisions of section 190(b) [s. 23(5)(b)] and his share in the income of the firm is a loss,— [s. 24(1) 2nd Proviso; earlier half.]

(a) such loss shall not be set off under the provisions of section 73(1), 74(1), or 75(1) [Sec. 24(1)]; [New]

(b) nothing contained in section 73(2) or 74(2) [Sec. 24 (2) main para] or section 75(2) [S. 24(2B)] shall entitle the assessee to have carried forward and set off against his own income such loss. [s. 24(2), Prov.so (c), latter part.]

(1) Where a change has occurred in the constitution of a firm, nothing in this Chapter shall be deemed to entitle the firm to have set off so much of the loss proportionate to the share of a retired or deceased partner computed in accordance with the provisions of section 69 [clause (b) of sub-section (1) of section 16] as exceeds his share of profits, if any, of the previous year in the firm, or to entitle any partner to the benefit of any portion of the said loss which is not apportionable to him under section 69 [section 16(1)(b)]. Section 79
Set off of losses in case of change in constitution of firms or on succession.
[s.24(2), Proviso (c).]

(2) Where any person carrying on any business, profession or vocation has been succeeded in such capacity by another person otherwise than by inheritance, nothing in this Chapter shall be deemed to entitle any person other than the person incurring the loss to have it set off against his income.....

Notwithstanding anything contained in this Chapter, no loss which has not been determined in pursuance of a return filed under the provisions of section 143 [22] shall be carried forward and set off under section 73(2) or 74(2) [24(2)] or section 75(2) [24(2B)]. Section 80
Submission of return for losses.
[s. 22(2A), part.]

CHAPTER VII

INCOMES ON WHICH NO INCOME-TAX IS PAYABLE

Income-tax shall not be payable by an assessee in respect of such portion, if any, of the earned income included in his total income as is directed by the annual Central Act fixing the rate or rates of income-tax for any assessment year to be deducted in making an assessment for that year..... Section 81
Earned income.
[s. 15A, earlier part.]

(1) Income-tax shall not be payable by a co-operative society, including a co-operative society carrying on the business of banking,— Section 82
Co-operative society.
[s. 14 (3),

- (i) in respect of profits and gains of business carried on by it,
- (ii) in respect of interest and dividends derived from its investments with any other co-operative society,
- (iii) in respect of any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities,
- (iv) in respect of any interest on securities chargeable under section 18 [8] or any income from property chargeable under section 22 [9], where the total income of such society does not exceed twenty thousand rupees and the society is not a housing society or an urban consumer's society or a society carrying on transport business

[s 14 (3) Ex-
plan]

(2) For the purposes of this section an "urban consumers' co-operative society" means a society for the benefit of consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.

[s 14 (3),
proviso]

(3) The provisions of sub-section (1) shall not apply to—

- (i) the Sanikatta Saltowners' Society;
- (ii) a co-operative society carrying on insurance business in respect of the profits and gains of that business computed in accordance with section 44 [Rule 9 of the Schedule]

Section 83

Dividends
from Co-operative
society [s 14 (4)]

Section 84

Marketing
Society
[s 14 (5)]

Income tax shall not be payable by an assessee, who is a member of a co-operative society, in respect of any dividends received by him from the society

Income tax shall not be payable by an assessee, who is an authority constituted under any law for the time being in force for the marketing of commodities, in respect of any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities

Section 85

Newly estab-
lished indu-
strial under-
takings
[s 15 C (1)]

(1) Save as otherwise hereinafter provided, income-tax shall not be payable by an assessee on so much of the profits or gains derived from any industrial undertaking to which this section applies as do not exceed six per cent per annum on the capital employed in the undertaking, computed in accordance with such rules as may be made in this behalf by the Central Board of Revenue

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely —

[s 15 C (2)
main para.]

- (i) it is not formed by the splitting up or the reconstruction of business already in existence;

Clauses 85-87

(ii) *it is not formed by the transfer to a new business of building, machinery or plant used in a business which was being carried on before the 1st day of April, 1948 ;*

(iii) *it has begun or begins to manufacture or produce articles in any part of India at any time within a period of thirteen years from the 1st day of April, 1948, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking ;*

(iv) *it employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.*

(3)The Central Government may, by notification in the Official Gazette, direct that the exemption ^[s.15 C (2), proviso.] conferred by this section shall not apply to any particular industrial undertaking.

(4) The profits or gains of an industrial undertaking ^[s.15 C(3)] to which this section applies shall be computed in accordance with the provisions of sections 28 to 43 [Section 10].

(5) Nothing in this section shall affect the application ^[s.15 C(5)] of sections 113 to 120 [23A] in relation to the profits or gains of an industrial undertaking to which this section applies.

(6) The provisions of this section shall apply to the ^[s.15 C(6)] assessment—

(i) *for the assessment year if in the previous year for that assessment year the assessee begins to manufacture or produce articles, and*

(ii) *for the four assessment years immediately succeeding.*

Income-tax shall not be payable by a shareholder in respect of so much of any dividend paid or deemed to be paid to him by an industrial undertaking as is attributable to that part of the profits or gains on which income-tax is not payable under section 85 [preceding section re: new industrial undertakings]. ^{Section 86 Dividend from new industrial undertakings [s.15 C(4).]}

Income-tax shall not be payable by an assessee in respect of the following amounts which are included in his total income— ^{Section 87 Other incomes.}

(i)the interest received on any security of the Central Government issued or declared to be income-tax free ; ^[s.8, 2nd proviso.]

Clauses 87-88

- [New] (ii) the interest received on any security of a State Government issued income-tax free, the income tax whereon shall be payable by the State Government,
- [Cf s 8 3rd proviso]
[s 14(2) (a)] (iii) if the assessee is a partner of an unregistered firm any portion of the assessee's share in the profits and gains of the firm computed in the manner laid down in section 69 [16 (1) (b)] on which income tax has already been paid by the firm,
- [s 14 (2)(aa)] (iv) if the assessee is a partner of a registered firm the amount which represents the difference between—
- (a) the assessee's share in the total income of the firm, and
- (b) his share in such total income as reduced by the income-tax, if any, payable by the firm
- [s 14(2) (b)] (v) if the assessee is a member of an association of persons, other than a Hindu undivided family a company or a firm any portion of the amount which he is entitled to receive from the association on which income tax has already been paid by the association

CHAPTER VIII

REBATES AND RELIEFS

A—Rebate of income tax

Section 88

Rebate on life insurance premium annuities and contributions to provident funds etc
[s 17 (2) part]
[s 15 (i)]

(1) Subject to the provisions of this section, the assessee shall be entitled to a deduction, from the amount of income tax on his total income with which he is chargeable for any assessment year, of an amount equal to the income tax calculated at the average rate of income tax on the following sums, namely —

- (a) where the assessee is an individual any sums paid in the previous year by the assessee—
- (i) to effect or to keep in force an insurance on the life of the assessee or on the life of a wife or husband of the assessee or
- (ii) to effect or to keep in force a contract for a deferred annuity on the life of the assessee or on the life of a wife or husband of the assessee, or
- (iii) as a contribution to any provident fund to which the Provident Funds Act 1925, applies.

Clauses 88-89

- (b) where the assessee is a Hindu undivided family,... [s. 15 (2)] any sums paid *in the previous year by the assessee to effect or to keep in force an insurance on the life of any male member of the family or of the wife of any such member* ;
- (c)any sum deducted *in the previous year from the salary payable by or on behalf of the Government to any individual, being a sum deducted in accordance with the conditions of his service, for the purpose of securing to him a deferred annuity or making provision for his wife or children, in so far as the sum so deducted does not exceed one-fifth of the salary* ; [s.7 (1), proviso.] 1st
- (d) *if the assessee is an employee participating in a recognised provident fund, his own contributions to his individual account in the fund in the previous year, to the extent provided in section 295 [58F]* ; [New]
- (e) *if the assessee is an employee participating in an approved superannuation fund, any sum paid in the previous year by him by way of contribution towards the superannuation fund, to the extent provided in section 311 [58R]*. [New]

(2) *The provisions of clauses (a) and (b) of sub-section (1) shall apply only to so much of any premium or other payment made on a policy (other than a contract for a deferred annuity) as is not in excess of ten per cent. of the actual capital sum assured.* [s.15 (2A)]

Explanation:—.....In calculating any such capital sum, no account shall be taken—

- (i) of the value of any premiums agreed to be returned, or
- (ii) of any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person.

(3) *The aggregate of the sums in respect of which a deduction of income-tax is allowed under sub-section (1), shall not exceed, in the case of an individual, one-fourth of his total income or eight thousand rupees, whichever is less, and in the case of a Hindu undivided family, one-fourth of its total income or sixteen thousand rupees, whichever is less.* [s.15 (3)]

(1) *Subject to the provisions of this section, the assessee shall be entitled to a deduction from the amount of income-tax on his total income with which he is chargeable for any assessment year, of an amount equal to the* Section 89. Donations for charitable purposes.

Clause 89

[s 15B (1) main para and 17 (2), part] income-tax calculated at the average rate of income-tax on any sums paid by him in the previous year as donations to any institution or fund to which this section applies

[s 15B (1) 2nd proviso (a)] (2) No deduction shall be made under sub-section (1) if the aggregate of the sums paid as aforesaid by the assessee is less than two hundred and fifty rupees

[s 15B (1) 2nd proviso (b)] (3) No deduction shall be made under sub-section (1) in respect of any sums paid in excess of one-twentieth of the assessee's total income as reduced by any portion thereof on which income-tax is not payable under any provision of this Act and by any amount in respect of which a deduction of income-tax has been granted under the provisions of this Chapter, or one hundred thousand rupees, whichever is less

[s 15B (3)] (4) The amount of income-tax deductible under this section, together with the amount of super-tax deductible under section 109 [section 15-B—for super-tax] shall not in any case exceed half the aggregate of the donations in respect of which the deduction is allowed under this section

[s 15B (2) main para] (5) This section applies to any institution or fund established in India for a charitable purpose which fulfils the following conditions, namely —

(i) if the institution or fund derives any income, such income would not be liable to inclusion in its total income under the provisions of section 12 (1) to 12 (4) [section 4(3)(i)] or section 12(5) [4(3)(ii)] or section 11(24) [new provision added in the draft clause for exclusion from total income, which relates to universities or other educational institutions not existing for profit],

(ii) the institution or fund is not expressed to be for the benefit of any particular religious community,

(iii) the institution or fund maintains regular accounts of its receipts and expenditure, and

(iv) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860, or under any law corresponding to that Act in force in any part of India or under section 25 of the Companies Act, 1956, or is a university established by law, or is any other educational institution recognised by Government or by a university established by law, or affiliated to any university established by law or is an institution financed wholly or in part by the Government or a local authority

Clauses 89-92

(6) An institution or fund established for the benefit of scheduled castes, backward classes, scheduled tribes or of women and children shall not be deemed to be an institution or fund expressed to be for the benefit of a religious community within the meaning of clause (ii) of sub-section (5). [s.15B (2),
Expln.]

B.—Relief for income-tax

Where, by reason of any portion of an assessee's salary being paid in arrears or in advance, or by reason of his having received in any one financial year salary for more than twelve months or a payment which is under the provisions of section 17 [sub-section (1) of section 7] a *perquisite* or a profit in lieu of salary, his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Central Government may grant the appropriate relief. Section 90
Salary paid
for more than
one year.
[s.60 (2)]

(1) Where by virtue of the provisions of section 13 [section 25(3) part and section 25(4) part as incorporated in the Chapter on exclusion from total income] the income of any business, profession or vocation of any period has not been included in the total income of the assessee, the assessee may further claim that the income from that business, profession or vocation of the said period shall be taken as the amount of income from that business, profession or vocation of the previous year immediately preceding the said period. Where any such claim is made, the income-tax payable in respect of the total income of the previous year immediately preceding the said period shall be determined in accordance with that claim, and if an amount of income-tax has already been paid in respect of that previous year in excess of the amount payable on the basis of such determination, a refund shall be given of the excess. Section 91.
Business assessed under
the Income-tax Act, 1918
[s.25 (3), part
and 25 (4),
part.]

(2) No claim to the relief afforded under sub-section (1) shall be entertained unless it is made before the expiry of one calendar year from the date on which the business, profession or vocation was discontinued or the succession took place, as the case may be. [s.25 (5)]

CHAPTER IX

DOUBLE TAXATION RELIEF

The Central Government may enter into an agreement— Section 92
Agreement
with countries.

- (a) with the Government of any country outside India for the granting of relief in respect of income on which have been paid both income-tax (including super-tax) under this Act and income-tax in that country, or [s.49A]

Clauses 92-93

- (b) with the Government of any country outside India for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country, and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement

section 93
Countries
with which
no agreement
exists
[s 49 D(1)]

(1) If any person who is resident in India in any previous year proves that, in respect of his income which accrues or arises during that previous year without India (and which is not deemed to accrue or arise in India), he has paid in any country, with which there is no agreement under section 92 [49A] for the relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal.

[s 49 D(3)]

(2) If any person who is resident in India in any previous year proves that in respect of his income which accrues or arises to him during that previous year in Pakistan he has paid in that country, by deduction or otherwise, tax payable to the Government under any law for the time being in force in that country relating to taxation of agricultural income, he shall be entitled to a deduction from the Indian income-tax payable by him—

- (a) of the amount of the tax paid in Pakistan under any law aforesaid on such income which is liable to tax under this Act also, or
- (b) of a sum calculated on that income at the Indian rate of tax,

whichever is less

[s 49 D,
Expl]

Explanation.—In this section,—

- (i) the expression 'Indian income-tax' means income-tax and super tax charged in accordance with the provisions of this Act,
- (ii) the expression 'Indian rate of tax' means the rate determined by dividing the amount of Indian income-tax after deduction of any relief due under the provisions of this Act but before deduction of any relief due under this section, by the total income,
- (iii) the expression "rate of tax of the said country" means income-tax and super-tax actually paid in the said country in accordance with the corresponding laws of the said country after deduction of all relief due, but before deduction of any relief

Clauses 93-96

due in the said country in respect of double taxation, divided by the whole amount of the income assessed in the said country;

- (iv) the expression "income-tax" in relation to any country", includes any excess profits tax or business profits tax charged on the profits by the Government of any part of that country or a local authority in that country.

(1) Where any dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed to a shareholder of a company which has obtained the relief.....granted under section 92 [49A] or under the India and Burma (Income-tax Relief) Order, 1936, the shareholder shall be deemed in respect of such dividend himself to have obtained such relief at the rate at which such relief has been granted in respect of income-tax only to the company for the financial year preceding the year in which the dividend was paid, credited or distributed or is deemed to have been paid, credited or distributed. Section 94
Relief to company to be regarded as relief to shareholder.
[s. 49C]

(2) If the rate at which a shareholder is deemed under sub-section (1) to have obtained relief exceeds the rate at which he would have been entitled to relief had such relief been given direct to him by or under the said section or Order, any excess shall be recovered from him either as an addition to the tax payable by him on any assessment made on him under section 147 or 148 [23] or section 152 [34] or by setting it off against any relief due to him under section 247 [48].

CHAPTER X

PROVISIONS AGAINST AVOIDANCE OF TAX.

Where business is carried on between a resident and a non-resident,..... and it appears to the Income-tax Officer, that owing to the close connection between them, the course of business is so arranged that the business transacted between them produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the Income-tax Officer shall determine the amount of profits..... which may reasonably be deemed to have been derived therefrom and include such amount in the total income of the resident..... Section 95
Certain transactions with nonresidents.
[s. 42 (2)]

Explanation.—For the purposes of this section, "non-resident" includes a person who is not ordinarily resident within the meaning of section 6, clause (6) [4B].

(1) Where there is a transfer of assets by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income.....becomes payable to a non-resident, the following provisions shall apply— Section 96
Avoidance of income-tax by transactions resulting in transfer of income to non-residents

Clause 96

- [s 44 D (1),
part] (a) where any person has by means of any such transfer, either alone or in conjunction with associated operations, acquired any rights by virtue of which he has, within the meaning of this section, power to enjoy whether forthwith or in the future, any income of a non-resident person which, if it were income of the first-mentioned person received by him in India, would be chargeable to income tax, that income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be income of the first-mentioned person for all the purposes of this Act,
- [s 44 D (2),
part] (b) where, whether before or after any such transfer, any such first mentioned person receives or is entitled to receive any capital sum the payment whereof is in any way connected with the transfer or any associated operations, then any income which, by virtue or in consequence of the transfer, either alone or in conjunction with associated operations, has become the income of a non-resident shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be the income of the first-mentioned person for all the purposes of this Act
- [s 44D(3)] (2) The provisions of sub-section (1) shall not apply if such first mentioned person shows to the satisfaction of the Income-tax Officer either—
- (a) that neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation, or
- (b) that the transfer and all associated operations were bona fide commercial transactions and were not designed for the purpose of avoiding liability to taxation
- [s 44D(4)] (3) For the purposes of this section, an "associated operation" means, in relation to any transfer an operation of any kind effected by any person in relation to—
- (i) any of the assets transferred, or
- (ii) any assets representing whether directly or indirectly any of the assets transferred, or
- (iii) the income arising from any such assets or
- (iv) any assets representing whether directly or indirectly the accumulations of income arising from any such assets

Clause 96

(4) A person shall, for the purposes of this section, be deemed to have power to enjoy income of a *non-resident* [s. 44D(5)]if—

- (a) the income is in fact so dealt with by any person as to be calculated at some point of time and, whether in the form of income or not, to enure for the benefit of the first-mentioned person, or
- (b) the receipt or accrual of the income operates to increase the value to such first-mentioned person of any assets held by him or for his benefit, or
- (c) such first-mentioned person receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and assets which represent that income, or
- (d) such first-mentioned person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or
- (e) such first-mentioned person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income.

(5) In determining whether a person has power to enjoy income within the meaning of this section, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits. [s. 44D(6)]

(6) For the purposes of this section— [s. 44 D (7) (a).]

- (a)‘assets’ includes property or rights of any kind, and.....‘transfer’ in relation to rights includes the creation of those rights;
- (b)‘benefit’ includes a payment of any kind; [s.44D(7)(b)] and
- (c) ‘capital sum’ means— [s. 44 D (2), part.]
 - (i) any sum paid or payable by way of a loan or repayment of a loan; and
 - (ii) any other sum paid or payable otherwise than as income, being a sum which is not paid or payable for full consideration in money or money’s worth.....

.....

- [s 44D(7)(d)] (d) references to assets representing any assets, income or accumulations of income include references to shares in or obligation of any company to which, or obligation of any other person to whom, those assets that income or those accumulations are or have been transferred,
- [s 44D(7)(e)] (e) any body corporate incorporated outside India shall be treated as if it were a non-resident,
- [s 44D(1) & (2) part] (f) a person shall be treated as a non-resident if he is not ordinarily resident within the meaning of section 6, clause (6) [4B]
- [s 44D (8)] (7) The provisions of this section shall apply also in relation to transfers of assets and associated operations carried out before the commencement of this Act
- [s 44D (9)] (8) Where any person has been charged to income-tax on any income deemed to be his under the provisions of this section, and that income is subsequently received by him, whether as income or in any other form, it shall not again be deemed to form part of his income for the purposes of this Act

Section 97

Avoidance of tax by certain transactions in securities

[s 44 E(1)]

(1) Where the owner of any securities (in this sub-section and in sub-sections (2) and (3) referred to as 'the owner') sells or transfers those securities, and buys back or re-acquires the securities, then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the interest payable as aforesaid shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this sub-section, be deemed for all the purposes of this Act, to be income of the owner and not to be the income of any other person

[s 44 E(2)]

(2) The references in sub-section (1) to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so however, that where similar securities are bought or acquired the owner shall be under no greater liability to income tax than he would have been under if the original securities had been bought back or re-acquired

[s 44 F (1) & (2) and s 44F (3) main para.]

(3) Where any person has had at any time during any previous year any beneficial interest in any securities, and the result of any transaction relating to such securities or the income thereof is that, in respect of such securities, within such year, either no income is received by him or the income received by him is less than the sum to which the income would have amounted if the income from such securities had accrued from day to day and been apportioned accordingly, then the income from such securities for such year shall be deemed to be the income of such person

Clause 97

(4)The provisions of sub-section (1) or sub-section (3) shall not apply if the owner, or the person who ^[s.44F (3) proviso] has had a beneficial interest in the securities, as the case may be, proves to the satisfaction of the Income-tax Officer—

(a) that there has been no avoidance of income-tax, or

(b) that the avoidance of income-tax..... was exceptional and not systematic and that there was not in his case in any of the three preceding years anyavoidance of income-tax.....by a transaction of the nature referred to in sub-section (1) or sub-section (3).

(5) Where any person carrying on a business which ^[s.44 E(3)] consists wholly or partly in dealing in securities buys or acquires any securities, and.....sells back or re-transfers the securities, then, if the result of the transaction is that interest becoming payable in respect of the securities is receivable by him, no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from or loss sustained in the business.

(6) Sub-section (5) shall have effect, subject to any ^[s.44 E(4)] necessary modifications, as if references to selling back or re-transferring the securities included references to selling or transferring similar securities.

(7) The Income-tax Officer may by notice in writing ^[s.44E(6), earlier half.] require any person to furnish him within such time as he may direct (not being less than twenty-eight days), in respect of all securities of which such person was the owner or in which he had a beneficial interest at any time during the period specified in the notice, such particulars as he considers necessary for the purposes of this section and for the purpose of discovering whether income-tax has been borne in respect of the interest on all those securities.....

(8) For the purpose of this section.— ^[s.44 E(5)]

(a).....‘interest’ includes a dividend;

(b)‘securities’ includes stocks and shares;

(c) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

A—Principal provisions

Section 98
Charge of
super-tax.
[s 55 main
para.]

(1) In addition to the income-tax charged for any assessment year, and save as otherwise provided in this Act, there shall be charged, levied and paid for that assessment year in respect of the total income of the previous year or previous years, as the case may be, of every person, not being a registered firm, an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that assessment year by any Central Act

Provided that where by virtue of any provision of this Act super-tax is to be charged in respect of the income of a period other than the previous year, super-tax shall be charged accordingly

[New]

(2) In respect of income chargeable under sub-section (1) super tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

[s 55 1st
prov]

(3) In the case of a registered firm, or an un-registered firm which has been assessed in the manner applicable to a registered firm under the provisions of section 180 (b) [s 23(5) (b)], super-tax shall be payable by each partner of the firm individually on his share in the income of the firm and not by the firm itself

Section 99

Total income
for super-tax
[s 56]

Subject to the provisions of this Chapter, the total income of any person shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become final and conclusive for the purposes of income-tax for any assessment year, the assessment shall also be final and conclusive for the purposes of super-tax for the same assessment year

Section 100

Business, pro-
fession or
vocation char-
ged under
1918 Act

[Sec 25
prov so
below sub-
section (4)]

The provisions of sections 13 and 91 [25(3) whole and (4) whole] shall not apply to the determination of the total income for the purposes of super-tax except where the profits and gains of the business, profession or vocation were assessed to super tax for the first time either for the assessment year 1920-1921 or for the assessment year 1921-1922

Section 101

Deductions
under interest
on securities

[New]

Where and in so far as the total income of an assessee includes any interest on securities on which no income-tax is payable under section 87(i) or section 87(ii) [section 8 Provisos 2 and 3], the following amounts shall be deducted in computing his total income for the purposes of super tax, namely —

(i) any reasonable sum expended by the assessee for the purpose of realising interest on such securities,

Clauses 101-107

- (ii) *any interest payable on money borrowed for the purpose of investment in such securities by the assessee.*

(1) All the provisions of this Act relating to the charge assessment, collection and recovery of income-tax.....shall apply, so far as may be and save as otherwise provided, to the charge, assessment, collection and recovery of super-tax. Section 102
Applicability of provisions to super-tax.
[s.58 (1)part]

(2) *Save as expressly provided in any other section in this Chapter, the provisions of sections 3, 167 174 (a)(i) and (ii), 188 and 200 (1) [Section 3, section 19, section 20, and First Proviso to sub-section (1) of section 41, section 8, 3rd proviso] and of Chapters VII and VIII and sections 295 and 311, and rule 3(c) (ii) of the First Schedule [chapters relating to income on which no income-tax is payable and rebate of income-tax] shall not apply to the charge, assessment, collection and recovery of super-tax.* [Sec.58(1), part] (VII)

Without prejudice to the generality of the provisions of section 99 [section providing that the total income for income-tax shall be the total income for super-tax also] the provisions of sections 97(2), 97(3), 97(4), 97(7), and 279 [44E(2), 44F(3), Proviso and 44E(6)] apply in relation to super-tax as they apply in relation to income-tax, with the modification that references therein to income-tax shall be construed as references to super-tax. Section 103
Avoidance of super-tax.
[New]
[cf. Ss. 44E and 44F]

B.—Incomes which do not form part of total income for super-tax

.....Where the income of an unregistered firm or other association of persons not being a company has been assessed to super-tax,.....the share of a partner in the income of the firm or the amount of such income which is proportionate to the share of a member of the association, as the case may be, shall not be included in his total income for the purposes of super-tax Section 104
Share in un-registered firm or. asso- ciation of persons,
[s. 55, 2nd prov.]

Any income of a co-operative society, in respect where- of no income-tax is payable by it by virtue of the provisions of section 82 [14(3), for income-tax], shall not be included in its total income for the purposes of super-tax Section 105
Co-operative society.
[s. 14 (3) for Super-tax.]

Any dividends received by a member of a co-operative society from the society shall not be included in his total income for the purposes of super-tax. Section 106
Dividends from Co-op. erative socie- ty.

.....Any income derived from the letting of go- downs or warehouses for storage, processing or facilitating the marketing of commodities by an assessee, which is an authority constituted under any law for the time being in force for the marketing of commodities, shall not be in- cluded in its total income for the purposes of super-tax. [Sec. 14 (4) for Super-tax]
Section 107
Marketing society.
[s. 14 (5) or super-tax.]

Clause 108

Section 108
Dividends
from certain
companies
[s 51 A(1)(i)
opening lines]
[s 56A (1)(i)
part]

(1) Dividends received by a company from an Indian company formed and registered after the 31st day of March, 1952 shall not be included in its total income for the purposes of super-tax, where—

- (i) the Central Government is satisfied that the Indian company is wholly or mainly engaged in an industry for the manufacture or production of any one or more of the items specified in sub-section (3), and
 - (ii) the Indian company fulfils the following conditions, namely —
 - (a) it is not formed by the splitting up or reconstruction of business already in existence,
 - (b) it is not formed by the transfer to it of building, machinery or plant used in a business which was at any time being carried on, and
 - (c) it employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.
- [s 56A (2)] (2) The exclusion specified in sub-section (1) shall apply also to dividends payable to a company in respect of any fresh capital raised by an Indian company after the 28th day of February, 1953, by public subscription for the purpose of increasing the production of, or starting a separate unit of, any one or more of the items specified in sub-section (3)
- [s 56A (3) (i) part] (3) The items referred to in sub-sections (1) and (2) are the following, namely —
- (1) Coal including coke and other derivatives,
 - (2) Iron and steel,
 - (3) Motor and aviation fuel, kerosene crude oils and synthetic oils (not being oil exploration),
 - (4) Heavy chemicals including fertilizers,
 - (5) Heavy machinery used in industry including ball and roller bearing and gear wheels and parts thereof, boilers and steam generating equipment,
 - (6) Machinery and equipment for the generation, transmission and distribution of electric energy,
 - (7) Non ferrous metals including alloys,
 - (8) Paper including newsprint and paper board.
 - (9) Internal combustion engines,
 - (10) Power-driven pumps,

Clauses 108-111

- (11) Automobiles;
- (12) Tractors;
- (13) Cement;
- (14) Electric Motors;
- (15) Locomotives;
- (16) Rolling Stock;
- (17) Machine Tools;
- (18) Agricultural Implements;
- (19) Ferro-manganese;
- (20) Dye-stuffs;

as specified in the First Schedule to the Industries (Development and Regulation) Act, 1951.

C—Rebate of super-tax.

(1) Where under the provisions of section 89. [15B for income-tax] an assessee is entitled to a deduction of income-tax in respect of any sum paid as donation, he shall also be entitled to a deduction, from the amount of super-tax with which he is chargeable on his total income, of an amount equal to the super-tax calculated at the average rate of super-tax on such sum. Section 109
Donations for charitable purposes.
[15B-for super tax, part and S.17(3),part.]

(2) The provisions of this section do not apply to a company. [S. 15B (1) 1st prov.]

(1) The assessee shall be entitled to a deduction, from the amount of super-tax with which he is chargeable on his total income, of an amount equal to the super-tax calculated at the average rate of super-tax on profits or gains derived from an industrial undertaking, in cases where and to the extent to which income-tax is not payable on such profits or gains under section 85 [15C for income-tax]. Section 110
Newly established industrial undertakings.
[S. 15E for Super-tax & S.17(3),part.]

(2) A shareholder shall be entitled to a deduction, from the amount of super-tax with which he is chargeable on his total income, of an amount equal to the super-tax calculated at the average rate of super-tax on so much of any dividend paid or deemed to be paid to him by an industrial undertaking as is attributable to that part of the profits or gains on which he is entitled to a deduction of super-tax under this section.

Where the assessee is a partner of a registered firm, he shall be entitled to a deduction, from the amount of super-tax with which he is chargeable on his total income, of an amount equal to the super-tax calculated at the average rate of super-tax on the following sum, that is to say— Section 111
Share from registered firm.
[S. 14(2)(aa), main para for super-tax, and sec. 17 (3) part.]

the amount which represents the difference between—

- (i) the assessee's share in the total income of the firm, and

Clauses 111-114

- (u) his share in the total income of the firm as reduced by the income-tax, if any, payable by the firm, at the rate of income-tax applicable to its total income, on the amount of its income from all sources other than from any business carried on by it

the shares in either case being computed in the manner laid down in section 69 [section 16(1) (b)]

Section 112

Relief for salary received in arrears etc [Sec 60(2)]—
for Super tax.]

The provisions of section 90 [Section 60(2)] apply in relation to super-tax as they apply in relation to income-tax

D—Additional super-tax on undistributed profits

Section 113

Super tax on undistributed income of certain companies [S 23A (1) part]

(1) Subject to the provisions of sub-section (2) and of sections 114, 115, and 116 [Sec 23A, sub-sections (2), (8) and (9)], where the Income-tax Officer is satisfied that in respect of any previous year the profits and gains distributed as dividends by any company within the twelve months immediately following the expiry of that previous year are less than the statutory percentage of the distributable income of the company of that previous year,

the Income-tax Officer shall make an order in writing that the company shall apart from the sum determined as payable by it on the basis of the assessment under section 147 or 148 [23], be liable to pay super-tax at the rate of—

(a) fifty per cent, in the case of an investment company, and

(b) thirty-seven per cent in the case of any other company,

on the undistributed balance of the total income of the previous year, that is to say, on the distributable income as reduced by the dividends actually distributed, if any

[S 23A (1) part]

(2) The Income tax Officer shall not make an order under sub section (1) if he is satisfied—

(i) that, having regard to the losses incurred by the company in earlier years or to the smallness of the profits made in the previous year, the payment of a dividend or a larger dividend than that declared would be unreasonable, or

(ii) that the payment of a dividend or a larger dividend than that declared would not have resulted in a benefit to the revenue

Section 114

Special provisions for certain companies

No order under section 113 [s 23A(1) operative part] shall be made—

(i) in the case of an investment company which has distributed not less than ninety per cent. of its distributable income, or

[S 23A (2)]

Clauses 114-117

- (ii) in the case of any other company whose distribution falls short of the statutory percentage by not more than five per cent. of its *distributable income*; or
- (iii) in any case where according to the return made by a company under section 143 [22] it has distributed not less than the statutory percentage of its *distributable income*, but in the assessment made by the Income-tax Officer under section 147 or 148 [23] a higher total income is arrived at and the difference in the total income does not arise out of the application of section 150(1) Proviso or section 150(2) [proviso to section 13] or section 148 [sub-section (4) of section 23] or the omission by the company to disclose its income fully and truly;

unless the company, on receipt of a notice from the Income-tax Officer that he proposes to make such an order, fails to make within three months of the receipt of such notice, a further distribution of its profits and gains so that the total distribution made is not less than the statutory percentage of the *distributable income*.

No order shall be made by the Income-tax Officer under section 113 [s. 23A(1) operative part] unless the previous approval of the Inspecting Assistant Commissioner has been obtained, and the Inspecting Assistant Commissioner shall not give his approval to any order proposed to be made by the Income-tax Officer until he has given the company concerned an opportunity of being heard.

Section 115
Approval of
Inspecting
Assistant
Commissioner.
[s. 23 A (8).]

Nothing contained in section 113 [s. 23A (1), operative part] shall apply—

- (a) to any company in which the public are substantially interested; or
- (b) to a subsidiary company of such company if the whole of the share capital of such subsidiary company has been held by the parent company or by its nominees throughout the previous year.

Section 116
Savings for
company in
which public
are substantially
interested.
[s. 23 A (9).]

(1) For the purposes of section 116 [23A(9)] a company shall be deemed to be a company in which the public are substantially interested—

- (a) if it is a company owned by the Government or in which not less than forty per cent. of the shares are held by the Government;

Section 117
“Company in
wh ch the
public are
substantially
interested.”
[sec. 23 A
Expl. 1 clause
(a), clause
(b) (i) main
part, cl use
(b) (ii) and
cl use (b)
(iii) main
para, earlier
half.]

Clause 117

of 1956

(b) if it is a public company as defined in the Companies Act, 1956, and—

- (i) its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than fifty per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the previous year beneficially held by, the Government or a corporation established by a Central, State or Provincial Act or the public (not including a company to which the provisions of section 113 [23A(1) operative part] apply)

[Sec 23 A
Exp 1 cl
(b) (i) Prov]

Provided that in the case of any such company as is referred to in clause (ii) of section 120 [s 23A, Exp 2], this sub-clause shall apply as if for the words "not less than fifty per cent" the words "not less than forty per cent" had been substituted,

- (ii) the said shares were at any time during the previous year the subject of dealing in any recognised stock exchange in India or were freely transferable by the holder to other members of the public, and
- (iii) the affairs of the company or the shares carrying more than fifty per cent of the total voting power were at no time during the previous year controlled or held by five or less persons

[Sec 23 A
Exp 1 cl
(iii) Prov]

Provided that in the case of any such company as is referred to in clause (ii) of section 120 [Sec 23A Exp 2], this sub-clause shall apply as if for the words "more than fifty per cent" the words "more than sixty per cent" had been substituted

[Sec. 23 A
Exp 1 cl
i clause (b),
sub-clause
(ii) man
para, la ter
half part]

(2) In computing the number of five or less persons aforesaid,—

- (a) the Government or any corporation established by a Central, State or Provincial Act or a company to which the provisions of section 113 [23A(1), operative part] do not apply, shall not be taken into account, and
- (b) persons who are relatives of one another and persons who are nominees of any other person together with that other person shall be treated as a single person

[Sec- 23 A
Exp 1
sub-clause
(iii) man
para, la ter
half part]

Explanation—In this sub section, the expression "relative" means husband, wife, lineal ascendant or descendant, brother or sister

Clauses 118-120

For the purposes of sections 113 and 114 [23A (1), substantive part and (2)], "distributable income" means the total income of a company as reduced by—

Section 118
"Distributable income".
[s. 23 A (1).
part.]

- (a) the amount of income-tax and super-tax payable by the company in respect of its total income, but excluding the amount of any super-tax payable under section 113 [s. 23A(1) operative part];
- (b) the amount of any other tax levied under any law for the time being in force on the company by the Government or by a local authority in excess of the amount, if any, which has been allowed in computing the total income;
- (c) any sum in respect of which a deduction of income-tax is allowed under the provisions of section 89 [15B]; and
- (d) in the case of a banking company, the amount actually transferred to a reserve fund under section 17 of the Banking Companies Act, 1949.

10 of 1949.

For the purposes of sections 113, 114 and 120, [Sec. 23A, sub-section (1) Operative part, sub-section (2) and Explanation 2], "investment company" means a company whose business consists wholly or mainly in the dealing in or holding of investments.

Section 119
"Investment company."
[New]

For the purposes of sections 113 and 114 [23A(1), substantive part and 23A (2)] "statutory percentage" means,—

Section 120
"Statutory percentage".
[s. 23 A,
Expl. 2]

- (i) in the case of an investment company 100%.
 - (ii) in the case of an Indian company whose business consists wholly in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power.....45%.
 - (iii) in the case of an Indian company, a part only of whose business consists in any of the activities specified in clause (ii)—
 - (a) in relation to the said part of the company's business.....45%.
 - (b) in relation to the remaining part of the company's business—
 - (1) if it is a company which satisfies the conditions specified in sub-clause (a) of clause (iv).....90%
 - (2) in any other case.....60%
- the said percentages being applied separately with reference to the amounts of profits and gains attributable to the two parts of the company's business aforesaid as if the said amounts were respectively the total income of the company in

Clauses 124-125

Section 124

Tax in the
case of non
resident[s 17(1)
ma n para.]

(1) Where a person is a non-resident and is not a company, the tax payable by him or on his behalf on his total income shall be an amount equal to—

- (a) the income-tax which would be payable on his total income at the maximum rate, plus
- (b) either the super-tax which would be payable on his total income at the rate of nineteen per cent or the super-tax which would be payable on his total income if it were the total income of a resident, whichever is greater

[s 17(1) 1st
prov earlier
part]

(2) Any non-resident, other than a company, may on or before the 30th day of June of the assessment year in which he first becomes assessable, by notice in writing to the Income-tax Officer declare (such declaration being final and being applicable to all assessments thereafter) that the tax payable by him or on his behalf on his total income shall be determined with reference to his total world income, and thereupon notwithstanding the provisions of sub-section (1) such tax shall be determined in accordance with sub-section (3)

[s 17(1) 1st
prov latter
part]
11 of 1922

(3) Where under the provisions of sub-section (2) or under any similar provision of the Indian Income tax Act 1922, any non-resident has exercised his option to be taxed with reference to his total world income, the tax payable by him or on his behalf on his total income shall be an amount bearing to the total amount of tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income

[s 17(1), 2nd
prov]

11 of 1922

(4) Where any person referred to in sub-section (1) satisfies the Income-tax Officer that he was prevented by sufficient cause from making the declaration referred to in that sub-section or in any similar provision of the Indian Income tax Act, 1922 on the first occasion on which he became assessable under this Act or the said Act as the case may be and his failure to make such declaration has not resulted in reducing his liability to tax for any year, the Income tax Officer may, with the previous approval of the Inspecting Assistant Commissioner, allow such person to make the declaration at any time after the expiry of the period specified and such declaration shall have effect in relation to the assessment for the year in which the declaration is made (if such assessment had not been completed before such declaration) and all assessments thereafter

Section 125

Tax on capital
gains in
cases of assess-
ees other than
companies
[s 17(6)
opening lines

Where the total income of an assessee not being a company, includes any income chargeable under the head "Capital gains", the tax payable by him on his total income shall be—

- (a) the amount of income-tax and super-tax payable on his total income as reduced by the amount of such

Clauses 125-127

inclusion, had the total income so reduced been his total income, plus

[s. 17 (6)
clause (i)
part.]

- (b) *an amount of income-tax determined in accordance with the following formula, that is to say—* [s. 17 (6)(ii)
main para.]

$$X = \frac{Y \times CG}{T - \frac{2}{3}CG}$$

where—

X stands for the amount of income-tax referred to in the beginning of this clause,

T stands for the total income of the assessee (which includes capital gains),

CG stands for the income chargeable under the head "Capital gains" included in the total income of the assessee, and

Y stands for the income-tax which would have been payable on the total income of the assessee as reduced by two-thirds of the amount of the income chargeable under the head "Capital gains" included in his total income. had the total income so reduced been his total income :

Provided that—

- (i) *where the total income does not exceed the sum of ten thousand rupees, the amount payable under clause (b) shall be nil; and* [s. 17 (6) (ii)
Proviso.]
- (ii) *in no case shall the amount payable under clause (b) exceeds one-half of the amount, if any, by which the income chargeable under the head "Capital gains" exceeds the sum of five thousand rupees.*

Section 126

Tax on capital gains in case of companies.

Where the total income of a company includes any income chargeable under the head "Capital gains", the tax payable by it shall be—

- (a) *the amount of income-tax with which it is chargeable on its total income, and* [s. 17 (7),
part.]
- (b) *the amount of super-tax with which it is chargeable on its total income as reduced by the amount of such inclusion. had the total income so reduced been its total income.*

CHAPTER XIII INCOME-TAX AUTHORITIES

A.—Appointment and control

Section 127.

Income-tax authorities.

There shall be the following classes of Income-tax authorities for the purposes of this Act, namely :—

- (a) the Central Board of Revenue,
(b) Directors of Inspection,
(c) Commissioners of Income-tax,

[s. 5(1)]

Clauses 127-130

- (d) Assistant Commissioners of Income-tax, who may be either Appellate Assistant Commissioners of Income-tax or Inspecting Assistant Commissioners of Income-tax
- (e) Income-tax Officers, and
- (f) Inspectors of Income-tax

Section 128
Appoint-
ments of In-
come tax
Authorities

(1) The Central Government may appoint as many Directors of Inspection, Commissioners of Income-tax, Appellate or Inspecting Assistant Commissioners of Income-tax and Income tax Officers of Class I Service, as it thinks fit

[Sec 5(1A)
earlier part
Sec. 5(2),
earlier part,
and Sec
5(3) earlier
part.]

(2) The Commissioner may, subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts appoint as many Income-tax Officers of Class II Service and as many Inspectors of Income-tax, as he thinks fit

[Sec 5(3A)]

(3) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts an Income-tax authority may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions

Section 129
Control of
Income tax
Authorities

(1) Appellate Assistant Commissioners shall be under the direct control of the Central Board of Revenue

[Sec 5(7)
(i)]

(2) Inspecting Assistant Commissioners shall be subordinate to the Director of Inspection, and to the Commissioner within whose jurisdiction they perform their functions

[Sec. 5(7)
(ii)]

(3) Income-tax Officers shall be subordinate to the Director of Inspection the Commissioner and the Inspecting Assistant Commissioner within whose jurisdiction they perform their functions

[Sec. 5 (5A)
[later part]]

(4) Inspectors of Income-tax shall be subordinate to the Income-tax Officer or other Income-tax authority under whom they are appointed to work and to any other Income-tax authority to whom the said officer or authority is subordinate

Explanation—For the purposes of sub-section (2) "Director of Inspection" does not include a Deputy Director of Inspection or an Assistant Director of Inspection, and for the purposes of sub-section (3), "Director of Inspection" does not include an Assistant Director of Inspection

Section 130
Instructions
to subordi-
nate author-
ities

(1) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue

[Sec. 5 (8)]

Clauses 130-131.

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions:

Provided further that all such orders, instructions and directions of a general nature affecting assesseees shall be published in the of India Gazette. [New]

(2) The Director of Inspection, the Commissioner or the Inspecting Assistant Commissioner, as the case may be, may issue such instructions as he thinks fit for the guidance of any Income-tax Officer subordinate to him in the matter of any assessment..... [Sec. 5(7B) earlier part.]

B-Jurisdiction

(1) Directors of Inspection shall, subject to the control of the Central Board of Revenue, perform such functions of any other Income-tax authority as may be assigned to them by the Central Government. Section 131 Jurisdiction of income-tax Authorities [Sec. 5 (1A) latter part.]

(2) Commissioners shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of income or of such cases or classes of cases as the Central Board of Revenue may direct, and where such directions have assigned to two or more Commissioners the same area or the same persons or classes of persons or the same incomes or classes of income or the same cases or classes of cases, they shall have concurrent jurisdiction subject to any orders which the Central Board of Revenue may make for the distribution and allocation of the work to be performed. [Sec. 5 (2), latter part.]

(3) (a) Appellate Assistant Commissioners shall perform their functions in respect of such persons or classes of persons or of such incomes or classes of income or in respect of such areas as the Central Board of Revenue may direct, and, where such directions have assigned to two or more Appellate Assistant Commissioners the same persons or classes of persons or the same incomes or classes of income or the same area, in accordance with any orders which the Central Board of Revenue may make for the distribution and allocation of the work to be performed. [Sec. 5(4), latter part.]

(b) *The Central Board of Revenue may transfer an appeal from one Appellate Assistant Commissioner to another.* [New]

(4) Inspecting Assistant Commissioners and Income-tax Officers shall perform their functions in respect of such persons or classes of persons or of such incomes or [s. 5(5) earlier part.]

Clause 131

classes of income or in respect of such areas as the Commissioner may direct and where such directions have assigned to two or more Inspecting Assistant Commissioners or Income-tax Officers the same persons or classes of persons or the same incomes or classes of income or the same area in accordance with any orders which the Commissioner may make for the distribution and allocation of the work to be performed

[Sec. 5(5)
latter part.]

(5) The Commissioner may, by general or special order in writing direct that the powers conferred on the Income-tax Officer and the Appellate Assistant Commissioner by or under this Act shall in respect of any specified case or class of cases or of any specified person or classes of persons be exercised by the Inspecting Assistant Commissioner and the Commissioner respectively and for the purposes of any case or person in respect of which any such order applies references in this Act or in any rules made hereunder to the Income-tax Officer and the Appellate Assistant Commissioner shall be deemed to be references to the Inspecting Assistant Commissioner and the Commissioner respectively

[Sec. 5 (5A)
earl or Para.]

(6) Inspectors of Income-tax shall perform such functions in the execution of this Act as are assigned to them by the Income-tax Officer or other Income-tax authority under whom they are appointed to work

[Sec. 5(6)]

(7) The Central Board of Revenue may by notification in the Official Gazette empower Commissioners Appellate Assistant Commissioners and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income or such area as may be specified in the notification and thereupon the functions so specified shall cease to be performed in respect of the specified classes of persons or classes of income or area by the other authorities appointed under sub-sections (2) (3) and (4)

[New]

Such notification shall not render necessary the re-issue of any notice already issued by the Income-tax Officer who was previously exercising such functions

[New]

(8) For the purposes of any case or person in respect whereof an order under sub-section (5) applies—

- (a) any provision of this Act requiring the approval or sanction of the Inspecting Assistant Commissioner in any matter shall not apply
- (b) any appeal which would otherwise lie to the Appellate Assistant Commissioner shall lie to the Commissioner and
- (c) any appeal which would have lain from any order of the Appellate Assistant Commissioner to the High Court shall lie from the order of the Commissioner to the High Court

Clauses 132-134

(1) The Commissioner may, for reasons to be recorded in writing, transfer any case from one Income-tax Officer subordinate to him to another also subordinate to him, and the Central Board of Revenue may, for reasons to be so recorded, transfer any case from anyIncome-tax Officer to any other.....

Section 132
transfer of
case from one
Income-tax
Officer to an-
other.

[s. 5(7A)
main para.
earlier part.]

[New]

(2) The Commissioner or the Central Board of Revenue, as the case may be, shall, before passing any order under sub-section (1), give the assessee a reasonable opportunity of being heard in respect of the proposed transfer.

(3) The Commissioner or the Central Board of Revenue, as the case may be, may, in special cases and for reasons to be recorded in writing, dispense with the giving of such opportunity as is referred to in sub-section (2), but the assessee shall, in every such case, be entitled to make a representation to the Commissioner or the Central Board of Revenue, as the case may be, against the order of transfer within one month of the date on which he comes to know of the order.

[New]

(4)Transfer of a case under sub-section (1) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Income-tax Officer from whom the case is transferred.

[s. 5 (7A),
main para,
latter part.]

Explanation.—In this section, “case”, in relation to any person whose name is specified in the order of the transfer, means all proceedings under this Act in respect of any year (including a past year) which may be pending on the date of the transfer, and includes all proceedings under this Act which may in respect of any year (including a past or a future year) be commenced after the date of the transfer.....

[s. 5(7A)
Exp.ln.]

Whenever in respect of any proceeding under this Act an Income-tax authority ceases to exercise jurisdiction, and is succeeded by another who has and exercises jurisdiction, the Income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor :

Section 133
Change of
incumbent of
an office.
[s. 5(7C),
main para.]

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be re-opened or that before any order for assessment is passed against him he be reheard.

[s. 5 (7C), 1st
rov.]

(1) For the purposes of sections 260, 265, 267(2), 271 and 272 [Section 33(2), earlier part, section 33(4), section 33A, section 33B(1), section 66(1), section 66(2), 66(3), 66(5), 66(7)] the Commissioner referred to therein shall, in relation to an assessee, be the Commissioner having for the time being jurisdiction over the assessee.

Section 134
Authority
competent to
take or continue
certain
proceedings.
[New]

Clauses 134-135

(2) For the purposes of sections 230 to 239 and 275 [section 33(5), sec 46] the Income-tax Officer referred to therein shall, in relation to an assessee, be the Income-tax Officer having for the time being jurisdiction over the assessee

Section 135
Income-tax
Officer entitled
to assess
[S 64(1)]

(1) Where an assessee carries on a business, profession or vocation at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situated or, where the business, profession or vocation is carried on in more places than one, by the Income-tax Officer of the area in which the principal place of his business, profession or vocation is situated

[S 64(2)]

(2) In all other cases, an assessee shall be assessed by the Income-tax Officer of the area in which he resides.

[S 64 (3)
main para.]

(3) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner, or, where the question is between places within the jurisdiction of different Commissioners, by the Commissioners concerned or, if they are not in agreement, by the Central Board of Revenue

[S 64(3), 1st
prov.]

Provided that, before any such question is determined, the assessee shall have had a reasonable opportunity of being heard in respect of the question

(4) The place of assessment shall not be called in question by an assessee—

[S 64(3) 2nd
prov earlier
part]

(a) if he has made a return under section 143(1) [Section 22(1)] and has stated therein his principal place of business, profession or vocation, or

[S 64(3), 2nd
prov latter
part.]

(b) (if he has not made such a return), after the expiry of the time allowed by the notice under section 143(2) [sub-section (2) of section 22] or under section 154 [34] for the making of a return.

[S 64(3), 3rd
[Prov]]

(5) If the place of assessment is called in question by an assessee, then, subject to the provisions of sub-section (4), the Income-tax Officer shall, if not satisfied with the correctness of the claim refer the matter for determination under sub-section (3) before assessment is made

[S 64(4)]

(6) Notwithstanding anything contained in this section, every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income accruing, or arising or received within the area for which he is appointed.

[S 64(5)]

(7) The provisions of sub-section (1) and sub-section (2) shall not apply to any assessee—

(a) on whom an assessment or re-assessment for the purposes of this Act has been, is being or is to be made in the course of any case in respect of which

Clauses 135-136

a Commissioner..... appointed without reference to area under section 131(2) [Sec. 5(2), latter part] is exercising the functions of a Commissioner,or

(b) where by any direction given or any distribution or allocation of work made by the Commissionerunder section 131(4).....[Sec. 5(5), earlier part] or in consequence of any transfer made under section 132 [Sec. 5(7A), main para], a particular Income-tax Officer has been charged with the function of assessing that assessee, or

(c) who or whose income is included in a class of persons or a class of incomes specified in any notification issued under section 131(7) [S. 5(6)];

but the assessment of such person.....shall be made by the Income-tax Officer for the time being charged with the function of making such assessment by the Central Board of Revenue or by the Commissioner to whom he is subordinate, as the case may be.

C—Powers.

(1) The Income-tax Officer, Appellate Assistant Commissioner and Commissioner.....shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely :—

- (a) discovery and inspection; [Sec. 37(1)]
- (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath; 5 of 1908
- (c) compelling the production of books of account and other documents; and
- (d) issuing commissions.

(2) *Where any Income-tax authority exercises any powers referred to in sub-section (1), it shall follow, so far as may be, the same procedure as a court under the said Code.* [New]

(3) Subject to any rules made in this behalf, any authority referred to in sub-section (1) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act: [Sec. 37(3)]

Provided that an Income-tax Officer shall not—

- (a) impound any books of account or other documents without recording his reasons for so doing. or
- (b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Commissioner therefor.

Clauses 136-138

[New]

(4) Where any person, whether a party to the proceeding or not, is desirous of receiving back any book of account or other document produced by him in any proceeding under this Act before any Income-tax authority, the Income-tax authority may, unless the book of account or other document is impounded under sub-section (3), return the same to such person on an application made for the purpose

[s 37(4)]

(5) Any proceeding before any authority referred to in this section shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code

45 of 1860

Section 137

Powers of search and seizure

[s 37(2)]

Subject to any rules made in this behalf, any Income-tax Officer specially authorised by the Commissioner in this behalf may,—

- (i) enter and search any building or place where he has reason to believe that any books of account or other documents which in his opinion will be useful for, or relevant to, any proceeding under this Act, may be found, and examine them, if found,
- (ii) seize any such books of account or other documents and have them removed to his office, if necessary,
- (iii) place marks of identification on any such books of account or other documents or make or cause to be made extracts or copies therefrom;
- (iv) make a note or an inventory of any articles or things found in the course of any search under this section which in his opinion will be useful for, or relevant to, any proceeding under this Act; and the provisions of the Code of Criminal Procedure, 1898, relating to searches shall apply, so far as may be, to searches under this section

5 of 1898.

Section 138

Power to call for information.

[sec 38]

The Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant Commissioner may, for the purposes of this Act,—

(1) require any firm to furnish him with a return of the names and addresses of the partners of the firm and their respective shares,

(2) require any Hindu undivided family to furnish him with a return of the names and addresses of the manager and the members of the family,

(3) require any person whom he has reason to believe to be a trustee, guardian or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian or agent, and of their addresses,

Clauses 138-141

(4) require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any *previous* year rent, interest, commission, royalty or brokerage, or any annuity, not being an annuity taxable under the head "Salaries", amounting to more than four hundred rupees, together with particulars of all such payments made;

(5) require any dealer, broker or agent or any person concerned in the management of a stock or commodity Exchange to furnish a statement of the names and addresses of all persons to whom he or the Exchange has paid any sum in connection with the sale, exchange or transfer of a capital asset, or on whose behalf or from whom he or the Exchange has received any such sum, together with particulars of all such payments and receipts;

(6) require any person, including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs verified in the manner specified by the Income-tax Officer, the *Appellate Assistant Commissioner* or the *Inspecting Assistant Commissioner*, giving information in relation to such points or matters as, in the opinion of the Income-tax Officer, the *Appellate Assistant Commissioner* or the *Inspecting Assistant Commissioner*, will be useful for, or relevant to, any proceeding under this Act.

The Income-tax Officer, the *Appellate Assistant Commissioner* or the *Inspecting Assistant Commissioner*, or any person subordinate to him authorised in writing in this behalf by the Income-tax Officer, the *Appellate Assistant Commissioner* or the *Inspecting Assistant Commissioner*, may inspect, and if necessary, take copies, or cause copies to be taken, of any register of the members, debenture holders or mortgagees of any company or of any entry in such register.

Section 139
Power to inspect registers of companies.
[s. 39.]

The Director of Inspection, the Commissioner and the Inspecting Assistant Commissioner shall be competent to make any enquiry under this Act, and for this purpose shall have all the powers that an Income-tax Officer has under this Act in relation to the making of enquiries.

Section 140
Power of Directors of Inspection and Inspecting Assistant Commissioners etc.
[s. 5 (7B), latter part.]

D—Disclosure of information.

(1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act, other than proceedings under Chapter XXIII [Existing Chapter VIII—Offences and penalties], or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated

Section 141
Disclosure of information prohibited.
[s. 54 (1)]

Clause 141

as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof

(2) No public servant shall disclose any particulars contained in any such statement, return, accounts documents, evidence affidavit, deposition or record

(3) Nothing in this section shall apply to the disclosure—

- [54 (3) (a)] (a) of any such particulars for the purposes of a prosecution for any offence under the Indian Penal Code, 1860 in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition or for the purposes of a prosecution for any offence under this Act, or
- 45 of 1860
- [54 (3) (b)] (b) of any such particulars to any person acting in the execution of this Act where it is necessary or desirable to disclose the same to him for the purposes of this Act , or
- [New] (c) the substance of any material to an assessee, being relevant material gathered for the purposes of making an assessment under section 147(3) [Section 23(3)] or under section 148 [Section 23(4)] without disclosing any information which might enable the assessee to identify the person to whom the material relates or
- [54 (3) (c)] (d) of any such particulars, where the disclosure is occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or
- [54 (3) (d)] (e) of any such particulars to a civil court in any suit or proceeding to which Government or any Income-tax authority is a party, which relates to any matter arising out of any proceeding under this Act or under any other law for the time being in force authorising any Income-tax authority to exercise any powers thereunder, or
- [New] (f) (i) of any such particulars contained in any accounts, or
- of 1908 (ii) of any registered document of which a certified copy can be obtained under the provisions of the Indian Registration Act, 1908, or
- of 1936 (iii) of a balance sheet or audit report or profit and loss accounts filed under the Companies Act, 1956 or any other Act relating to companies

Clause 141

to a civil court in any suit or proceeding to which the person who produced the accounts, registered document, balance sheet, audit report or profit and loss account, or his representative-in-interest, is a party, if the particulars, registered document, balance sheet, audit report, or profit and loss account are relevant to any matter in issue in such suit or proceeding;

- (g) of any such particulars to the Comptroller and Auditor-General of India for the purpose of enabling him to discharge his functions under the Constitution; or
- (h) of any such particulars to any officer appointed by the Comptroller and Auditor-General of India or the Central Board of Revenue to audit income-tax receipts or refunds; or
- (i) of any such particulars, relevant to any inquiry into the conduct of an official of the Income-tax Department, to any persons appointed Commissioners under the Public Servants (Inquiries) Act, 1850, or to an officer otherwise appointed to hold such inquiry, or to a Public Service Commission established under the Constitution, when exercising its functions in relation to any matter arising out of any such inquiry; or
- (j) of any such particulars relevant to any inquiry into a charge of misconduct in connection with income-tax proceedings against a legal practitioner or chartered accountant, to the authority referred to in section 324 (3) [Section 61(3)], when exercising the functions referred to in that sub-section; or
- (k) of any such particulars by any public servant, where the disclosure is occasioned by the lawful exercise by him of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document; or
- (l) of such facts, to an authorised officer of the Government of any country outside India which has entered into an agreement with India for the granting of relief in respect of or avoidance of double taxation, as may be necessary for the purpose of enabling such relief or a refund under section 92 [49A] to be given or such avoidance under that section to be made effective; or
- (m) of such facts, to an officer of a State Government as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it; or

Clauses 141-142

[New]

(n) of such facts, to an officer of the Central Government as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it, or

[Sec 54 (3)
(k)]

7 of 1878

(o) of such facts, to any authority exercising powers under the Sea Customs Act, 1878, or any Central Act imposing a duty of excise as may be necessary for enabling it duly to exercise such powers, or

[Sec 54 (3)
(l)]

(p) of such facts, to any person charged by law with the duty of inquiring into the qualifications of electors as may be necessary to establish whether a person is or is not entitled to be entered on an electoral roll, or

[Sec 54 (3)
(m)]

(q) of so much of such particulars, to the appropriate authority, as may be necessary to establish whether a person has or has not been assessed to income-tax in any particular year or years, where under the provisions of any law for the time being in force such fact is required to be established or

[Sec 54 (3)
(n)]

(r) of such particulars to the Reserve Bank of India as are required by that Bank to enable it to compile financial statistics of international investment and balance of payments, or

[Sec 54 (3)
(o)]

(s) of such information as may be required by any officer or department of the Central Government or of a State Government for the purpose of investigation into the conduct and affairs of any public servant, or

[Sec 54 (3)
(p)]

31 of 1950

(t) of any such particulars to the Custodian of Evacuee Property appointed under the Administration of Evacuee Property Act, 1950, for the purpose of enabling him to discharge the duties imposed upon him by or under the said Act

[Sec 54(4)]

(4) Nothing in this section shall apply to the production by a public servant before a court of any document declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 181 [25A] or sections 191 to 193 or to the giving of evidence by a public servant in respect thereof

[New]

(5) In this section, "public servant" means any public servant employed in the execution of this Act

Section 142
Saving regarding voluntary disclosures by persons making the statement etc
[New]

Nothing in section 141 [54(1) 54(2) and 54(3) as reduced in preceding section] shall prohibit the voluntary disclosure of any particulars referred to in sub-section (1) of that section by the person by whom the statement was made the return furnished, the accounts or document produced, the evidence given or the affidavit or deposition made as the case may be

Clause 143

CHAPTER XIV

PROCEDURE FOR ASSESSMENT

- (1) (a) *Every person,.....if his total income, or the total income of any other person in respect of which he is assessable under this Act, during the previous year exceeded the maximum amount which is not chargeable to income-tax shall furnish, to the Income-tax Officer having jurisdiction to assess him, on or before the 30th day of June of each financial year, a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth.....such other particulars as may be prescribed:* Section 143
Return of income.
[s. 22 (1)]

Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return in the case of any person or class of persons:

Provided further that no such return need be furnished by any such person if he has already furnished a return of income for such year in accordance with the provisions of sub-section (2).....[22(2)].

- (b) *Where a return of income has been sent under clause (a) to an Income-tax Officer who has no jurisdiction to make the assessment, it shall be his duty to forward the return to the Income-tax Officer having jurisdiction.*

(2) *In the case of any person who, in the Income-tax Officer's opinion....., is assessable under this Act, whether on his own total income or on the total income of any other person during the previous year, the Income-tax Officer may before the end of the relevant assessment year serve a notice upon him requiring him to furnish, within thirty days from the date of service of the notice, a return of his income or the income of such other person during that year, in the prescribed form and verified in the prescribed manner and setting forth.....such other particulars as may be prescribed.....* [s. 22 (2)].

Provided that the Income-tax Officer may, in his discretion, extend the date for the delivery of the return.

(3) *If any person.....has sustained a loss.....in any previous year under the head 'Profits and gains of business, profession or vocation', and such loss or any part thereof would ordinarily have been carried forward under section 73(2) or 74(2) [Sub-section (2) of section 24], such person, or the person assessable in respect of the total income of such person, shall, if he has not been served with a notice under sub-section (2),furnish on or before the 30th day* [s. 22 (2-A),
part.]

Clauses 143-145

of June of the assessment year or within such further time as the Income-tax Officer in any case may allow, a return of loss in the prescribed form and verified in the prescribed manner and containing such other particulars as may be prescribed, and all the provisions of this Act shall apply as if it were a return under sub-section (1)

[s 22 (3)]

(4) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2) or having furnished a return under either of those sub-sections discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made

[s 22 (5)]

(5) The prescribed form of the returns referred to in sub-sections (1) (2) and (3) shall in the case of an assessee engaged in any business profession or vocation, require him to furnish particulars of the location and style of the principal place wherein he carries on the business, profession or vocation and of the branches thereof, the names and addresses of his partners if any, in such business, profession or vocation and the extent of the share of the assessee and the shares of all such partners in the profits of the business profession or vocation and any branches thereof

Section 144
Return by whom to be signed

The return under section 143 [22(1) or 22(2) or 22(3)] shall be signed and verified—

[New]

- (a) in the case of an individual, by the individual himself, where the individual is absent from India, by some person duly authorised by him in this behalf and where the individual is mentally incapacitated from attending to his affairs, by his guardian or committee or by any other person competent to act on his behalf,
- (b) in the case of a Hindu undivided family, by the Karta, and, where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family,
- (c) in the case of a company or local authority, by the principal officer thereof,
- (d) in the case of a firm, by any partner thereof, not being a minor,
- (e) in the case of any other association, by any member of the association or the principal officer thereof, and
- (f) in the case of any other person, by that person or by some person competent to act on his behalf

Section 145
Provisional assessment

(1) The Income-tax Officer may, at any time after the receipt of a return made under section 143[22], proceed to make, in a summary manner, a provisional assessment of

Clause 145

the tax payable by the assessee, on the basis of his return [s. 23B (1), and the accounts and documents, if any, accompanying earlier part.] it.....

(2) In making any assessment under this section due effect shall be given to— [s. 23B (1), latter part.]

(a) the allowance referred to in section 32(2) [para (b) of the proviso to section 10(2)(vi)], and

(b) any loss carried forward under section 73(2) or 74 (2) [24(2)].

(3) A partner of a firm may be provisionally assessed under sub-section (1) in respect of his share in the income of the firm, if its return has been received, even if the return of the partner himself has not been received. [s. 23 B (2)]

(4) A firm may be provisionally assessed under sub-section (1) as an unregistered firm, except in the following cases, where it shall be assessed as a registered firm— [s. 23 B (3)]

(a) where the firm was assessed as a registered firm for the latest assessment year for which its assessment has been completed, and it has before the date prescribed for the purposes of this clause, filed its application for registration or declaration under section 191(7) [section for declaration] for the assessment year for which the provisional assessment is to be made; [New. See Notification No. 83 of 3-9-1949 of the Ministry of Finance, Revenue Division.]

(b) where no regular assessment has been made on the firm for any assessment year preceding the assessment year for which the provisional assessment is to be made, and the firm has, before the date prescribed for the purposes of this clause, filed its application for registration, or declaration as aforesaid, for the assessment year for which the provisional assessment is to be made.

(5) After a regular assessment has been made.....any amount paid or deemed to have been paid towards the provisional assessment made under sub-section (1) shall be deemed to have been paid towards the regular assessment; and where the amount paid or deemed to have been paid towards the provisional assessment exceeds the amount payable under the regular assessment, the excess shall be refunded to the assessee. [s. 23 B (7)]

(6) Nothing done or suffered by reason or in consequence of any provisional assessment made under this section shall prejudice the determination, on the merits, of any issue which may arise in the course of the regular assessment..... [s. 23 B (8)]

Clauses 145-147

[s 23 B (4)] (7) There shall be no right of appeal against a provisional assessment made under sub-section (1)

Section 146
Enquiry be-
fore assess-
ment

[s 22 (4)]

(1) For the purpose of making an assessment under this Act, the Income-tax Officer may serve on any person who has made a return under section 143(1) [22(1)] or section 143(3) [22(2A)] or upon whom a notice has been served under section 143(2) [22(2)] (whether a return has been made or not), a notice requiring him on a date to be therein specified,—

(i) to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require, or

(ii) to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the assessee, whether included in the accounts or not) as the Income-tax Officer may require.

Provided that the previous approval of the Commissioner shall be obtained before requiring the assessee to furnish a statement of all assets and liabilities not included in the accounts

Provided further that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year

[New]

(2) For the purpose of obtaining full information in respect of the income or loss of any person, the Income tax Officer may make such enquiry as he considers necessary

[New]

(3) The assessee shall, except where the assessment is made under section 148 [s 23(4) part regarding best judgment assessment], be given an opportunity of rebutting the substance of any material gathered on the basis of any enquiry under sub-section (2) and proposed to be utilised for the purpose of the assessment

Section 147
Assessment.

[s 23 (1)]

(1) Where a return has been made under section 143 [22] and the Income-tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that the return is correct and complete, he shall assess the total income or loss of the assessee, and shall determine the sum payable by him or refundable to him on the basis of such return

[s 23 (2)]

(2) Where a return has been made under section 143 [22] but the Income-tax Officer is not satisfied without requiring the presence of the person who made the return or the production of evidence that the return is correct and complete, he shall serve on such person a notice requiring him, on a date to be therein specified, either to

Clauses 147-149

attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return.

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as such person may produce and such other evidence as the Income-tax Officer may require, on specified points, *and after taking into account all relevant material which the Income-tax Officer has gathered and which the Income-tax Officer is competent to take into account*, shall, by an order in writing, assess the total income or loss of the assessee, and determine the sum payable by him or refundable to him on the basis of such assessment. [s. 23 (3)]

(1) If any person—

- (a) fails to make the return required by any notice given under section 143 (2) [sub-section (2) of section 22] and has not made a return or a revised return under section 143(4) [sub-section (3) of section 22], or
- (b) fails to comply with all the terms of a notice issued under section 146(1) [sub-section (4) of section 22], or
- (c) having made a return, fails to comply with all the terms of a notice issued under section 147 [section re: assessment under 23(1) (2) & 23(3)],

Section 148.
Best Judgment.
Assessment.

[s. 23 (4)
main para,
earlier part.

the Income-tax Officer, *after taking into account all relevant material which the Income-tax Officer has gathered and which the Income-tax Officer is competent to take into account*, shall make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

(2) *The Income-tax Officer shall, in every order under sub-section (1), refer to the material on the basis of which the assessment is made.* [New]

For the purposes of sections 147 and 148, [two preceding sections regarding assessment and best judgment] *the relevant material which the Income-tax Officer is competent to take into account in respect of an assessee includes—* Section 149.
"Relevant material"
[New]

- (a) *market conditions in the previous year of the trade in which the assessee was engaged in the previous year,*
- (b) *rates of profits disclosed by the accounts of other persons engaged in the same line of trade, and*
- (c) *rates of profits determined in the case of the assessee in assessments for earlier or subsequent years.*

Clauses 150-152

Section 150
Method of
accounting
[s 13, main
para]

(1) Income chargeable under the head "Profits and gains of business, profession or vocation" or "Income from other sources" shall be computed in accordance with the method of accounting regularly employed by the assessee

[s 13 Provi-
so, part]

Provided that if though the accounts are correct and complete to the satisfaction of the Income-tax Officer, the method employed is such that, in the opinion of the Income-tax Officer, the income cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine

[s 13 Provi-
so, part]

(2) Where the Income-tax Officer is not satisfied about the correctness or the completeness of the accounts of the assessee, or where no method of accounting has been regularly employed by the assessee, the Income-tax Officer may make an assessment in the manner provided in section 148 [23(4) main para, part regarding best judgment assessment]

Section 151
Reopening of
assessment at
the instance
of the asses-
see
[S 27]

Where an assessee assessed under section 148 [23(4)] makes an application to the Income-tax Officer, within one month from the service of a notice of demand issued in consequence of the assessment, for cancellation of the assessment on the ground—

- (i) that he was prevented by sufficient cause from making the return required by section 143 [22], or
- (ii) that he did not receive the notice issued under section 146(1) [22(4)] or section 147 [23(2)], or
- (iii) that he had not a reasonable opportunity to comply or was prevented by sufficient cause from complying, with the terms of the notices referred to in clause (ii),

the Income-tax Officer shall, if satisfied about the existence of such ground, cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of sections 147 and 148 [section 23]

If—

Section 152
Income es-
caping assess-
ment

[s 34 (1)
first para,
clause (a),
part.]

- (a) the Income-tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under section 143 [22] for any assessment year or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

[s 34 (1)
first para,
clause (b),
part.]

- (b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason

Clauses 152-155

to believe that income chargeable to tax
has escaped assessment for any assessment year,
.....

he may, subject to the provisions of sections 153 to 159 [s. 34 (1) 2nd para] [other sections in group dealing with escaped income] assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in sections 153 to 159 [other sections in the group for escaped income] referred to as the relevant assessment year).

Explanation.—Production before the Income-tax Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure within the meaning of this section..... [s. 34 (1) Expl.]

For the purposes of section 152 [section regarding income escaping assessment], the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely— Section 153. "Income which has escaped assessment" Meaning.

- (a) where income.....chargeable to tax has been under-assessed; or [s. 34 (1), first para, clause (a), part, and clause (b), part].
- (b) where such income has been assessed at too low a rate; or
- (c) where such income has been made the subject of excessive relief under this Act; or
- (d) where excessive loss or depreciation allowance has been computed.

(1) Before making the assessment, reassessment, or re-computation under section 152 [section regarding income escaping assessment], the Income-tax Officer shall serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under section 143(2) [section 22(2)]; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section. Section 154. Issue of notice where income has escaped assessment. [s. 34 (1) second para, part]

(2) The Income-tax Officer shall, before issuing any notice under this section, record his reasons for doing so... [s. 34 (1) 1st prov. clause (iii) part.]

(1) The notice under section 154 [section regarding notice] may, subject to the provisions of sub-section (2) and of section 157 [section regarding sanction], be issued— Section 155. Time-limit for notice.

- (a) in cases falling under clause (a) of section 152 [section regarding income escaping assessment],— [s. 34 (1), second para, part]

- (i) at any time, if the income.....chargeable to tax which has escaped assessment or has been under-assessed or assessed at too a low rate or has past.] [s. 34 (1), 1st prov., clause (ii), latter half part.]

Clauses 155-157

been made the subject of excessive relief under this Act or the loss or depreciation allowance which has been computed in excess amounts to or is likely to amount to fifty thousand rupees or more for the relevant assessment year

34 (1) 1st
row clause
) later
all part
modified

- (ii) within a period of sixteen years from the end of the relevant assessment year, where the case does not fall under sub clause (i) of this clause and the income chargeable to tax which has escaped assessment or has been under-assessed or assessed at too low a rate or has been made the subject of excessive relief under this Act or under the Indian Income tax Act 1922 or the loss or depreciation allowance which has been computed in excess under this Act or under the said Act amounts to or is likely to amount to one lakh of rupees or more in the aggregate for the sixteen assessment years (including assessment years under the said Act) immediately preceding the assessment year in which such notice is issued

11 of 1922

[s 34 (1) 1st
Prov Cl ()
each half]

- (iii) within a period of eight years from the end of the relevant assessment year, in any other case,

[s 34 (1)
second para
part]

- (b) in cases falling under clause (b) of section 152 [section regarding income escaping assessment] within a period of four years from the end of the relevant assessment year

[s 34 (1)
2nd Prov]

- (2) If the person on whom a notice under section 154 [section re notice] is to be served is a person treated as the agent of a non resident under section 173 [s 43] and the assessment or reassessment to be made in pursuance of the notice is to be made on him as agent of such non resident the notice shall not be issued after the expiry of a period of two years from the end of the relevant assessment year

Section 156
Provisions for
cases where
assessment is
in pursuance
of an order
on appeal etc

[s 34 (3)
2nd Prov
each half
part]

Notwithstanding anything contained in sub-section (1) or sub section (2) of section 155 [preceding section] but subject to the provisions of section 157 [section regarding sanction] the notice under section 154 [section regarding notice] may be issued at any time for the purpose of making an assessment or re-assessment on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 259 263 269 271 or 272 [section 31 33 33A 33B 66 or 66A] passed in the case of the assessee

Section 157
Same on for
issue of
notice
[s 34 (1) 1st
Prov Cl
() part]

- (1) No notice shall be issued under section 154 [section regarding notice] after the expiry of eight years from the end of the relevant assessment year unless the Central Board of Revenue is satisfied on the reasons recorded by the Income tax Officer that it is a fit case for the issue of such notice

Clauses 157-160

(2) No notice shall be issued under section 154 [section regarding notice] after the expiry of four years from the end of the relevant assessment year, unless the Commissioner is satisfied on the reasons recorded by the Income-tax Officer that it is a fit case for the issue of such notice. [s. 34 (1), 1st prov. cl. (iii), part]

(1) In an assessment or re-assessment made under section 152 [section regarding income escaping assessment], the tax shall be chargeable at the rate or rates at which it would have been charged had the income.....not escaped assessment or full assessment, as the case may be. Section 158: Other Provisions [s. 34 (1) 2nd prov.]

(2) Where an assessment is reopened in circumstances falling under clause (b) of section 152 [section regarding income escaping assessment], the assessee may, if he has not impugned any part of the original assessment order for that year either under sections 254 to 256 [30] or under section 272 [33A], claim that the proceedings under section 152 [section regarding income escaping assessment] shall be dropped on his showing that he had been assessed on an amount or to a sum not lower than what he would be rightly liable for even if the items alleged to have escaped assessment had been taken into account, or the assessment or computation had been properly made: [s. 34 (2)]

Provided that in so doing he shall not be entitled to reopen matters concluded by an order under section 271 [33B] or section 161 or 162 [35] or by a decision under section 263 [66] or section 269 [66A].

An assessment or re-assessment under section 152 [section regarding income escaping assessment] shall be completed within the time, if any, limited by section 160 [34 (3)]. Section 159. Saving re-gard.ng time limit for completion. [New]

(1) No order of assessment shall be made under section 147 or 148 [23] at any time after— Section 160. Time limit for completion of assessments and reassessments [s. 34 (3), main para, part]

(a) the expiry of four years from the end of the assessment year in which the income was first assessable; or [New]

(b) the expiry of four years from the issue of a notice under section 283(1) [28(3)], in a case falling under section 280(1) (c) [s. 28(1) (c)]; or [New] (Contrast s. 34 (3), main para, words "other than ...applies").

(c) the expiry of one year from the date of the filing of a return or a revised return under section 143 (4) [22(3)]; [New]

whichever is latest.

(2) No order of assessment or re-assessment shall be made under section 152 [section re : income escaping assessment]— [New]

(a) where the assessment or re-assessment is to be

. Clause 160

made under clause (a) of that section, [section re. income escaping assessment], after the expiry of four years from the end of the assessment year in which the notice under section 154 [section re. notice] was served;

(b) where the assessment or re-assessment is to be made under clause (b) of that section [section re. income escaping assessment], after—

- [s 34 (3),
main para,
Part]
- (i) the expiry of four years from the end of the assessment year in which the income was first assessable, or
- [s 34 (3),
1st Prov]
- (ii) the expiry of one year from the date of service of the notice under section 154, [section re. notice],
whichever is later

(3) The provisions of sub-sections (1) and (2) shall not apply to the following classes of assessments and re-assessments, which may be completed at any time—

- [s 34 (3),
2nd Prov
earlier half]
- (i) where a re-assessment is made under section 151 [27],
- [s 34 (3),
2nd Prov
latter half,
part]
- (ii) where the assessment or re-assessment is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 259, 263, 269, 271, or 272 [section 31, 33, 33A, 33B, 66 or 66A]

[s 5 (7C),
2nd Prov]

Explanation 1— In computing the period of limitation for the purposes of this section, the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be reheard under section 133 Proviso [5 (7C) 1st Prov], or any period during which the assessment proceeding is stayed by an order or injunction of any court, shall be excluded

[New]

Explanation 2.—Where, by an order under section 259, 263, 269 271 or 272, [31 section 33, section 33A, section 33B section 66 or section 66A] any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 156 and this section [34(3), 2nd Proviso, latter half both parts], be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order

[New]

Explanation 3.—Where, by an order under section 259, 263 269 271 or 272 [31 section 33 section 33A, section 33B, section 66 or section 66A] any income is excluded from the total income of one person and held to be the income of another person, then an assessment of such income on such other person shall, for the purposes of section 156 and this section [34(3), 2nd Proviso, latter half

Clauses 160-161

both parts] be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, provided such other person was given an opportunity of being heard before the said order was passed.

(1) With a view to rectifying any mistake apparent from the record— Section 161.
Rectification
of mistake

(a) the Income-tax Officer may amend any order of assessment or of refund or any other order, passed by him: [s. 35 (1),
main para,
part]

(b) the Appellate Assistant Commissioner may amend any order passed by him in appeal under section 259 [31]; [s. 35 (1),
main para,
part]

(c) the Commissioner may amend any order passed by him in revision under section 272 [33A] or section 271 [33B]. [s. 35 (1),
main para,
part]

(2) Subject to the other provisions of this section, the authority concerned— [s. 35 (1)
main para
part]

(a) may make an amendment under sub-section (1) of its own motion, and

(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee.

(3) An amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard. [s. 35 (1), 1st
prov.]

(4) Where an amendment is made under this section, an order shall be passed in writing by the Income-tax authority concerned. [New]

(5) Where any such amendment has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee. [s. 35 (3)]

(6) Where any such amendment has the effect of enhancing the assessment or reducing a refund already made, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 163 [section 29], and the provisions of this Act shall apply accordingly. [s. 35 (4)]

(7) Save as otherwise provided in section 162 or section 193 (4), [s. 35(5) to 35(10) or sec. re: cancellation of registration], no amendment under this section shall be made after the expiry of four years from the date of the order sought to be amended. [sec. 35 (1),
main para,
part]

Clause 162

Section 162
other amend-
ments

(1) Where in respect of any completed assessment of a partner in a firm it is found—

[35 (5)]

- (a) on the assessment or reassessment of the firm, or
- (b) on any reduction or enhancement made in the income of the firm under section 161(1), 259, 263, 269, 271 or 272, [section 31, section 33, section 33A, section 33B, section 66, section 66A or section 35(1)],

that the share of the partner in the income of the firm has not been included in the assessment of the partner or, if included, is not correct, the Income tax Officer may amend the order of assessment of the partner with a view to the inclusion of the share in the assessment or the correction thereof as the case may be, and the provisions of section 161 [35(1) to (4)] shall, *mutatis-mutandis*, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the final order passed in the case of the firm

[New]

(2) Where in respect of any completed assessment of a member of an association of persons it is found—

- (a) on the assessment or re-assessment of the association, or
- (b) on any reduction or enhancement made in the income of the association under section 161(1), 259, 263 269, 271 or 272, [section 31, section 33, section 33A, section 33B section 66, section 66A or section 35(1)],

that the share of the member in the income of the association has not been included in the assessment of the member or, if included, is not correct, the Income-tax Officer may amend the order of assessment of the member with a view to the inclusion of the share in the assessment or the correction thereof, as the case may be, and the provisions of section 161 [35(1) to (4)] shall, *mutatis-mutandis*, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the final order passed in the case of the association

Provided that nothing in this sub-section shall affect the provisions of section 87 clause (v) [14(2)(b)]

[35 (8)]

(3) Where, as a result of proceedings initiated under clause (a) of section 152 [section corresponding to existing section 34(1) and (2)] a firm or an association of persons is assessed or reassessed, and the Income-tax Officer concerned is of opinion that it is necessary to compute or recompute the total income of a partner in the firm or a member of the association of persons as the case may be, the Income-tax Officer may proceed to compute or recompute the total income and

Clause 162

determine the sum payable on the basis of such computation or recomputation *and make the necessary amendment*; and the provisions of section 161 [35(1) to (4)] shall *mutatis mutandis apply thereto*, the period of four years specified in sub-section (7) of that section being reckoned from the date of the final order passed in the case of the firm or association, as the case may be.

(4) Where the Income-tax Officer is satisfied that the [s. 35 (9)] income-tax payable by a company on its profits and gains out of which the company has declared a dividend, has not been paid within three years after the financial year in which the dividend was declared *or within one year after the financial year in which the assessment of the company for the assessment year concerned was made, whichever is later*, the amount of income-tax which a shareholder of the company is deemed himself to have paid in respect of such dividend under section 246 [49B], or the amount for which credit is due to him under section 246 [sub-section (5) of section 18] in respect of such dividend, shall be deemed to have been wrongly computed; and the Income-tax Officer may, notwithstanding anything contained in this Act, proceed to recompute such amount by reducing it in the same proportion as the amount of income-tax remaining unpaid by the company bears to the amount of income-tax payable by it on such profits and gains, *and make the necessary amendment*: and the provisions of section 161 [35(1) to (4)] shall *mutatis mutandis* apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date on which the period of three years aforesaid has expired *or the date on which the period of one year aforesaid has expired, whichever is later*.

(5) Where an allowance by way of development rebate [s. 35 (11)] has been made wholly or partly to an assessee in respect of a ship, machinery or plant in any *assessment year* under section 33 [clause (vib) of sub-section (2) of section 10], and subsequently at any time before the expiry of ten years from the end of the *previous year* in which the ship was acquired or the machinery or plant was installed—

- (i) the ship, machinery or plant is sold or otherwise transferred by the assessee to any person other than the Government; or
- (ii) the assessee utilises the amount credited to the reserve account under *the said section read with section 34* [section for conditions]—
 - (a) for distribution by way of dividends or profits; or
 - (b) for remittance outside India as profits or for the creation of any asset outside India; or
 - (c) for any other purpose which is not a purpose of the business of the undertaking;

the development rebate originally allowed shall be deemed to have been wrongly allowed, and the Income-tax Officer may, notwithstanding anything contained in this Act,

recompute the total income of the assessee for the relevant previous year and make the necessary amendment, and the provisions of section 161 [s 35(1) to (4)] shall, *mutatis mutandis*, apply thereto, the period of four years specified in sub section (7) of that section being reckoned from the end of the previous year in which the transfer takes place or the money is so utilised

[New]

(6) Where any such debt or part of debt as is referred to in section 36(6)(i) [sub-clause (i) of clause (6) of section relating to deductions from business] is written off as irrecoverable in the accounts of the assessee for a previous year, and the Income-tax Officer is satisfied that such debt or part thereof became a bad debt in an earlier previous year, the Income tax Officer may, notwithstanding anything contained in this Act, allow such debt or part of debt as a deduction for such earlier previous year, and recompute the total income of the assessee for such earlier previous year and make the necessary amendment, and the provisions of section 161 [35(1) to (4)] shall, *mutatis mutandis*, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which the debt is actually written off as irrecoverable

Section 163
Notice of
demand

[s 29]

When any tax, penalty or interest is due in consequence of any order passed under or in pursuance of this Act, the Income-tax Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable

Section 164
Intimation of
loss.

[s 24 (3)]

When in the course of the assessment of the total income of any assessee it is established that a loss has taken place which the assessee is entitled to have carried forward and set off under the provisions of section 73(2) 74(2) or 75(2) [24(2) (2B)], the Income-tax Officer shall notify to the assessee by an order in writing the amount of the loss as computed by him for the purposes of section 73 (2), 74(2) or 75(2) [24(2) (2B)]

Section 165
Intimation of
assessment of
firm

[s 23 (6)]

Whenever a registered firm is assessed, or an unregistered firm is assessed under the provisions of section 190(b) [23(5)(b)] the Income tax Officer shall notify to the firm by an order in writing the amount of its total income assessed and the apportionment thereof between the several partners

Section 166
Information
& returns

[s 20A and
Rules 42A &
43A]

(1) The person responsible for paying any interest, not being "Interest on securities", shall on or before the fifteenth day of June in each year, furnish to the Income-tax Officer having jurisdiction to assess him, a return, in the prescribed form and verified in the prescribed manner, of the names and addresses of all persons to whom during

Clauses 166-167

the previous financial year he has paid interest or aggregate interest exceeding such amount, not being less than four hundred rupees, as may be prescribed in this behalf, together with the amount paid to each such person.

(2) The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association, and every private employer shall prepare, and within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form and verified in the prescribed manner, a return in writing showing— [s. 21.]

(a) the name and, so far as it is known, the address, of every person who was receiving on the 31st day of March, or has received or to whom was due during the year ending that date, from the Government, the authority, company, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed;

(b) the amount of the income so received by or so due to each such person, and the time or times at which the same was paid or due, as the case may be;

(c) the amount deducted in respect of income-tax and super-tax from the income of each such person.

(3) Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under subsection (2), as provided by section 314 [58T] [s. 58T]

(4) The principal officer of every company which is an Indian company or a company which has made such effective arrangements as may be prescribed for the declaration and payment of dividends in India shall, on or before the 15th day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addresses, as entered in the register of shareholders maintained by the company, of the shareholders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each shareholder. [s. 19A]

The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income-tax or that no income-tax is payable (as the case may be) on the profits which are being distributed and specifying such other particulars as may be prescribed. [s. 20]

Section 167.
Certificate by
company to
shareholders
receiving
dividends.

CHAPTER XV

LIABILITY IN SPECIAL CASES

A—Legal representatives

Section 168
Legal repre-
sentatives
[s 24B (1),
part]

(1) Where a person dies, his legal representative shall be liable to pay any tax, penalty or other sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased

[s 24B (2),
and (3)]

(2) For the purpose of making an assessment (including an assessment under section 152 [section 34]) of the income of the deceased and for the purpose of levying any tax, penalty or other sum in the hands of the legal representative in accordance with the provisions of sub-section (1),—

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased,

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative, and

(c) all the provisions of this Act shall apply accordingly

[New]

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee

[New]

(4) The provisions of sub-section (3) of section 170 [section relating to liability of representative assessee sub-section (3)], section 171 [new section regarding right of representative assessee to recover tax paid] section 172, [new section providing when representative assessee is personally liable] and section 176 [new section relating to remedies against properties in case of representative assessee] shall so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a representative assessee

[s 24B (1),
part]

(5) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) be limited to the extent to which the estate is capable of meeting the liability

[s 24B (1),
part]

(6) In this Chapter, "legal representative" includes an executor or administrator

Clauses 169-170

B—Representative assessee—General provisions.

(1) For the purposes of this Act, “representative assessee” means— Section 169.
“Representative assessee.”

(i) in respect of the income of a non-resident specified in section 9(i) [Section 42(1), main para, earlier part], the agent of the non-resident, including a person who is treated as such under section 173 [43]; [s 42(1) main para, latter half, part]

(ii) in respect of income of a minor, lunatic or idiot, the guardian or committee or manager or trustee who is entitled to receive or is in receipt of such income on behalf of such minor, lunatic or idiot; [s. 40 (1), part]

(iii) in respect of income which the Court of Wards, the Administrator-General, the Official Trustee or any receiver or manager (including any person, whatever his designation, who in fact manages property on behalf of another) appointed by or under any order of a court, receives or is entitled to receive, on behalf of any person, such Court of Wards, Administrator-General, Official Trustee, receiver or manager; [s. 41 (1), main para, part]

(iv) in respect of income which a trustee or trustees appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise (including any Wakf deed which is valid under the Mussalman Wakf Validating Act, 1913) receive or are entitled to receive on behalf of any person, such trustee or trustees..... [s. 41 (1) main para, part] 6 of 1913

(2) Every representative assessee shall be deemed to be an assessee for the purposes of this Act. [New-of. s. 42 (1)]

(1) Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in this Chapter, be levied upon and recovered from him in like manner and to the same amount as it would be leviable upon and recoverable from the person represented by him. Section 170.
Liability of representative assessee.
[s. 40 (1), part s. 41(1), main para, part, s. 42(1), main para, latter half, part]

(2) Any tax payable in respect of any such assessment shall be recoverable from the representative assessee, but to the extent only of assets belonging to the person whom he represents which may be or may come in his possession or under his management, disposal or control: [New]

Clauses 170-173

Provided that nothing in this sub-section shall affect the provisions of section 172 [newly added section laying down when representative assessee personally liable]

[New] (3) Where any person is, in respect of any income, assessable under this Chapter in the capacity of a representative assessee, he shall not, in respect of that income, be assessed under any other provision of this Act

Section 171
Right of representative assessee to recover tax paid.
[New] (1) Every representative assessee who, as such, pays any tax shall be entitled to recover the amount so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the amount so paid

[s 42 (1), 2nd prov] (2) Any representative assessee, or any person who apprehends that he may be assessed as a representative assessee, may retain out of any money payable by him to the person on whose behalf he is liable to pay tax (hereinafter in this section referred to as the principal) a sum equal to his estimated liability under this Chapter, and in the event of any disagreement between the principal and such representative assessee or person as to the amount to be so retained, such representative assessee or person may secure from the Income-tax Officer a certificate stating the amount to be so retained pending final settlement of the liability and the certificate so obtained shall be his warrant for retaining that amount

[s 42 (1) 3rd prov] (3) The amount recoverable from such representative assessee or person at the time of final settlement shall not exceed the amount specified in such certificate except to the extent to which such representative assessee or person may at such time have in his hands additional assets of the principal.

Section 172
When representative assessee personally liable
[New] Every representative assessee shall be personally liable for any tax payable by him in his representative capacity if while his liability for tax remains undischarged, he charges, disposes of or parts with any assets, which are in his possession or come to him after the tax is payable, when from or out of such assets, the tax could legally have been paid

C—Representative assessee—special cases

Section 173
Who may be regarded as agent
[s 43 main para] (1) For the purposes of this Act, "agent", in relation to a non-resident includes any person in India—
(a) who is employed by or on behalf of the non-resident or
(b) who has any business connection with the non-resident or

Clauses 173-174

(c) through whom the *non-resident* is in receipt of any income, or

(d) *who is the trustee of the non-resident* : [s. 40 (2)]

Provided that a broker in India who, in respect of any transactions, does not deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker shall not be deemed to be an agent under this section in respect of such transactions, if the following conditions are fulfilled, namely :—

(a) the transactions are carried on in the ordinary course of business through the first-mentioned broker; and

(b) the non-resident broker is carrying on such transactions in the ordinary course of his business and not as a principal.

Explanation.—A person, whether a resident or a non-resident, who acquires whether by sale, exchange, transfer or relinquishment, a capital asset in India from a non-resident shall, for the purposes of charging to tax the capital gain arising from such sale, exchange, transfer or relinquishment, be deemed to have a business connection, within the meaning of this section, with such non-resident. [s. 43, Expln.]

(2) No person shall be treated as the agent of a non-resident unless he has had an opportunity of being heard by the Income-tax Officer as to his liability to be treated as such. [s. 43, 2nd Prov.]

..... Where any income in respect of which the persons mentioned in section 169(1) (iii) and (iv), [S. 41(1) Part, as embodied in the clauses dealing with Court of Wards etc. and trustees in the newly added section defining representative assessee] are liable as representative assessee, or any part thereof, is not specifically receivable on behalf of any one person, or where the individual shares of the persons on whose behalf such income or such part thereof is receivable (which persons are hereinafter in this section referred to as the beneficiaries) are indeterminate or unknown,—

(a) income-tax shall be charged—

(i) as if such income or such part thereof were the total income of an association of persons, or [s. 41 (1), 1st Prov., latter half, part]

(ii) if such income or such part thereof is received by a beneficiary, then at the rate or rates applicable to the beneficiary, [s. 41 (1), 1st Prov., earlier half, modified]

as the Income-tax Officer may direct; and

Clauses 174 178

[New]

- (b) super tax shall be charged as if such income or such part thereof were the total income of an association of persons

Sect on 175
Case where
part of trust
income is
chargeable
[s 41 (1) 2nd
prov]

Where part only of the income of a trust is chargeable under this Act that proportion only of the income receivable by a beneficiary from the trust which the part so chargeable bears to the whole income of the trust shall be deemed to have been derived from that part

D—Representative assessee—General

Sect on 176
Remedies
against prop-
erty in cases
of representa-
tive assessee
[New]

The Income tax Officer shall have the same remedies against all property of any kind vested in or under the control or management of any representative assessee as he would have against the property of any person liable to pay any tax and in as full and ample a manner

Sect on 177
Direct assess-
ment not bar-
red
[s 41 (2) and
s 42(1) ma-
para latter
half part
extended]

Nothing in the foregoing sections in this Chapter shall prevent either the direct assessment of the person on whose behalf income therein referred to is receivable or the recovery from such person of the tax payable in respect of such income

E—Executors

Sect on 178
Executors
[New]

(1) Subject as hereinafter provided, the income of the estate of a deceased person shall be chargeable to tax in the hands of the executor,—

- (a) if there is only one executor, then as if the executor were an individual or

- (b) if there are more than one executor, then as if the executors were an association of persons

(2) The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own income

(3) Separate assessments shall be made under this section on the total income of each completed previous year or part thereof as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests

(4) In computing the total income of any previous year under this section any income of the estate of that previous year distributed to or applied to the benefit of, any beneficiary of the estate during that previous year shall be excluded but the income so excluded shall be included in the total income of the previous year of such beneficiary

Explanation—In this section "executor" includes an administrator or other person administering the estate of a deceased person.

Clauses 179-180

The provisions of section 171 [New section authorising a representative assessee to recover tax paid from the principal] shall, *mutatis-mutandis*, apply in the case of an executor in respect of tax paid or payable by him as they apply in the case of a representative assessee.

Section 179.
Right of executor to recover tax paid.
[New]

F—Succession to business, profession or vocation.

(1) Where a person carrying on any business, profession or vocation, (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by another person (hereinafter in this section referred to as the successor) who continues to carry on that business, profession or vocation, the predecessor and the successor shall, subject to the provisions of sections 13(2), 13(3), 91(1) and 100 [section 25(4)] each be assessed in respect of his actual share, if any, of the income.....of the previous year, that is to say,—

Section 180.
Succession to business otherwise than on death [s. 26(2), main para]

(a) the predecessor shall be assessed in respect of the income of the previous year upto the date of succession, and

(b) the successor shall be assessed in respect of the income of the previous year after the date of succession.

(2) Notwithstanding anything contained in sub-section (1), when the predecessor cannot be found, the assessment of the income of the previous year in which the succession took place upto the date of succession, and for the previous year preceding that year shall be made on the successor in like manner and to the same amount as it would have been made on the predecessor.....

[s. 26(2), Prov. earlier half]

(3).....When the tax in respect of the income of such business, profession or vocation, for the previous year in which the succession took place upto the date of succession or for the previous year preceding that year, assessed on the predecessor, cannot be recovered from him, it shall be payable by and recoverable from the successor, and the successor shall be entitled to recover from the predecessor the amount of any tax so paid.

[s. 26(2), Prov. latter half]

(4).....Where any.....business, profession or vocation.....carried on by a Hindu undivided family.....is succeeded to, and simultaneously with the succession or after the succession there has been a partition of the joint family property between the members or groups of members, the tax due in respect of the business, profession or vocation succeeded to upto the date of succession shall be assessed and recovered in the manner provided in section 181(4) and 181(6) [section 25A(2), remaining part, as embodied in section on partition], but without prejudice to the provisions of this section.

[s. 25A(2) main para]

Clause 181

G—Partition.

- Section 181
Assessment
after partition
of a Hindu
undivided
family
[s 25A(3)]
[s 25A(1),
main para
entire part]
- (1) A Hindu family hitherto assessed as undivided shall be deemed, for the purposes of this Act to continue to be a Hindu undivided family, except where and in so far as a finding of partition has been given under this section in respect of the Hindu family
- [s 25A(1),
main para
latter part]
- (2) Where at the time of making an assessment under section 147 or 148 [23], it is claimed by or on behalf of any member of a Hindu family assessed as undivided that a partition whether total or partial, has taken place among the members of such family, the Income-tax Officer shall make an inquiry thereinto after giving notice of the inquiry to all the members of the family
- [s 25A(1),
main para
latter part]
- (3) On the completion of the inquiry, the Income-tax Officer shall record a finding as to whether there has been a total or partial partition of the joint family property, and, if there has been such a partition the date on which it has taken place
- [s 25A(2),
main para
part]
- (4) Where a finding of total or partial partition has been recorded by the Income-tax Officer under this section and the partition took place during the previous year,—
- (a) the total income received by or on behalf of the joint family in respect of the period upto the date of partition shall be assessed as if no partition had taken place, and
- [s 25A(2),
main para,
part]
- (b) each member or group of members shall, in addition to any tax for which he or it may be separately liable and notwithstanding anything contained in section 11 clause (2) [section 14(1)], be jointly and severally liable for the tax on the income so assessed.
- [s 25A(2),
row]
- [New]
- (5) Where a finding of total or partial partition has been recorded by the Income-tax Officer under this section and the partition took place after the expiry of the previous year the total income of the previous year of the joint family shall be assessed as if no partition had taken place and the provisions of clause (b) of sub-section (4) shall, mutatis mutandis, apply to the case
- [s 25A(2),
main para,
part]
- (6) For the purposes of clause (b) of sub-section (4), the several liability of any member or group of members thereunder shall be computed according to the portion of the joint family property allotted to him or it at the partition.
- [New]
- (7) After a finding of total partition has been recorded by the Income tax Officer under this section in respect of any Hindu family the Income-tax Officer having jurisdiction to assess the Hindu family shall, subject to the provisions of section 135(7) [64(5)] —

Clauses 181-182

- (a) if the Hindu family carried on any business, profession or vocation, be the Income-tax Officer of the area in which its principal place of business, profession or vocation was situate immediately before the partition; and
- (b) in other cases, be the Income-tax Officer of the area in which the person who was the last manager of the Hindu family was residing immediately before the partition.

(8) The provisions of this section shall, *mutatis mutandis* and so far as may be, apply in relation to the levy and collection of any penalty or other sum in respect of any period upto the date of the partition, whether total or partial, of a Hindu family as they apply in relation to the levy and collection of tax in respect of any such period. [New]

Explanation.—In this section,—

[New]

(a) “partition” means—

- (i) a physical division of the property, if the property admits of such division, or,
 - (ii) where the property does not admit of physical division, then such division as the property admits of; and a mere severance of status shall not be deemed to be a partition;
- (b) “partial partition” means a partition which is partial as regards the persons constituting the Hindu undivided family, or the properties belonging to the Hindu undivided family, or both.

H—Shipping business of non-residents.

(1) The provisions of this section shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of a non-resident who carries on business in India in any financial year as the owner or charterer of a ship (such person hereinafter in this section being referred to as the principal).....

Section 182.
Shipping
business of
non-residents
[s. 44A, earlier
part]

(2) Where a ship of the principal carries passengers, livestock, mail or goods shipped at a port in India, one-sixth of the amount paid or payable on account of such carriage to the principal or to any person on his behalf, whether that amount is paid or payable in or out of India, shall be deemed to be income accruing in India to the principal on account of such carriage.....

[s. 44B (2),
latter half]

(3) Before the departure from any port in India of any such ship.....the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the principal, or to any person on his

[s. 44B(1)]

behalf, on account of the carriage of all passengers, live-stock, mail or goods shipped at that port since the last arrival of the ship thereat

[s 41B(2), earlier part] (4) On receipt of the return, the Income-tax Officer shall assess the income referred to in sub-section (2) and determine the sum payable as tax thereon at the rate or rates for the time being applicable to the total income of a company which has not made the arrangements referred to in section 203 [18(3D) main para], and such sum shall be payable by the master of the ship

[s 44B(2), earlier part] (5) For the purpose of determining the tax payable under sub section (4) the Income tax Officer may call for such accounts or documents as he may require

[s 44B(3), latter part] (6) A port clearance shall not be granted to the ship until the Customs-Collector, or other officer duly authorised to grant the same, is satisfied that the tax assessable under this section has been duly paid

[s 44C] (7) Nothing in this section shall be deemed to prevent the principal from claiming in the financial year following that in which any payment has been made on his behalf under this section, that an assessment be made of his total income of the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act and if he so claims any such payment as aforesaid shall be treated as a payment in advance of the tax leviable in the relevant assessment year, and the difference between the sum so paid and the amount of tax found payable by him on such assessment shall be paid by him or refunded to him, as the case may be

[s 44A, latter part] (8) The provisions of this section shall not apply where the Income tax Officer is satisfied that there is an agent of the principal from whom the tax will be recoverable in the relevant assessment year under the other provisions of this Act

I—Recovery of tax in respect of non-residents

Section 183
Recovery of tax in respect of non resident from his assets
[s 42(1) 1st Prov]

Without prejudice to the provisions of section 170(1) [section embodying the rule that a representative assessee is liable to pay the tax] or of section 176 [section newly added authorising the Income-tax Officer to proceed against assets with agent] where the person entitled to the income referred to in section 9 clause (1) [42(1) main para earlier part] is a non resident the tax chargeable thereon, whether in his name or in the name of his agent who is liable as a representative assessee may be recovered by deduction under any of the provisions of sections 201 to 204 [18(2) to 18(3D)] and any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident which are or may at any time come within, India

J—Persons leaving India.

(1) Notwithstanding anything contained in section 3 [section 3], when it appears to the Income-tax Officer that any individual may leave India during the current assessment year, or shortly after its expiry, and that he has no present intention of returning,.....the total income of such individual for the period from the expiry of the previous year for that assessment year, to the probable date of his departure from India.....shall be chargeable to tax in that assessment year. Section 184.
Assessment
of person
leaving India.
[s. 24A(1),
main para,
earlier half]

(2).....The total income of each completed previous year or part thereof included in such period.....shall be chargeable to tax at the rate or rates in force in that assessment year, and separate assessments shall be made in respect of each such completed previous year or part thereof. [s. 24A (1),
main para,
latter half,
part]

(3) The Income-tax Officer may estimate the income of such individual for such period or any part thereof, where it cannot be readily determined in the manner provided in this Act. [s. 24A(1),
main para,
latter half,
part]

(4) For the purpose of making an assessment under sub-section (1), the Income-tax Officer may serve a notice upon such individual requiring him to furnish, within such time, not being less than seven days, as may be specified in the notice, a return in the same form and verified in the same manner as a return under section 143(2) [sub-section (2) of section 22], setting forth.....his total income for each completed previous year comprised in the period referred to in sub-section (1) and his estimated total income for any part of a complete previous year comprised in that period.....; and the provisions of this Act shall, so far as may be, and subject to the provisions of this section, apply as if the notice were a notice issued under section 143(2) [sub-section (2) of section 22]. [s. 24A(2)]

(5) Tax chargeable under this section shall be in addition to the tax, if any, chargeable under any other provision of this Act. [New]

(6) Where the provisions of sub-section (1) are applicable, any notice issued by the Income-tax Officer under section 143(2) [sub-section (2) of section 22] or section 154 (1) [section 34(1), second para, portion relating to the issue of a notice containing the requirement to be included on the lines of section 22(2)] in respect of any tax chargeable under any other provision of this Act may, notwithstanding anything contained in section 143(2) [section 22(2)] or section 154(1) [section 34(1) second para, portion relating to notice containing such requirements] as the case may be, require the furnishing of the return by such individual within such period, not being less than seven days, as the Income-tax Officer may think proper. [New]

[New]

(7) Every assessment under sub-section (1) shall be completed within three months of the date on which the notice under sub-section (4) is served, except where such individual himself waives his right to have the assessment so completed, or where the assessment is delayed owing to any conduct of such individual

K—Discontinuance of business, or dissolution.

Section 185
Discontinued
business
[s 25(1)
part]
7 of 1918

(1) Notwithstanding anything contained in section 3, [section 3] where any business, profession or vocation which was not charged under the provisions of the Indian Income-tax Act, 1918, is discontinued in any assessment year, the total income of such business, profession or vocation of the period from the expiry of the previous year for that assessment year upto the date of such discontinuance may, at the discretion of the Income-tax Officer, be charged to tax in that assessment year

[New]

(2) The total income of each completed previous year or part thereof included in such period shall be chargeable to tax at the rate or rates in force in that assessment year, and separate assessments shall be made in respect of each such completed previous year or part thereof

[s 25(2)
earlier part]

(3) Any person discontinuing any such business, profession or vocation shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof

[s 25(1),
part]

(4) Tax chargeable under this section shall be in addition to the tax, if any, chargeable under any other provision of this Act

Section 185
Association
dissolved or
business
discontinued
[s 44(1),
part]

(1) Where any business, profession or vocation carried on by an association of persons has been discontinued or where an association of persons is dissolved,—

(a) the Income-tax Officer shall make an assessment of the total income of the association of persons as if no such discontinuance or dissolution had taken place, and

[s 44(3),
part]

(b) every person who was at the time of such discontinuance or dissolution a member of the association, and the legal representative of any such member who is deceased, shall in respect of the income of the association be jointly and severally liable for the amount of tax payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment

[New]

(2) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the persons referred to in sub-section (1) from the stage at

Clauses 186-188

which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

(3) *The provisions of sub-sections (1) and (2) shall, so far as may be and mutatis mutandis, apply in relation to any penalty or other sum, chargeable under any provision of this Act, as they apply in relation to tax.* [New] [s.44(2) part s.44(3) part]

(4) *Nothing in this section shall affect the provisions of section 170(2) [24B(1), portion limiting liability of legal representative to extent of estate].* [New]

L—Special provisions for certain kinds of income.

Where the time taken by the author of a literary or artistic work in the making thereof is more than twelvemonths,.....the amount received or receivable by him during any previous year on account of any lump sum consideration for the assignment or grant of any of his interests in the copyright of that work or of royalties or copyright fees (whether receivable in lump sum or otherwise), in respect of that work, shall, if he so claims, be allocated for purposes of assessment as hereunder—

Section 187.
Royalties or
copyright
fees for liter-
ary or arti-
stic work.
[s. 12AA]

- (i) *where the time so taken is less than twenty-four months, one-half of the amount of such lump sum, royalties or fees as the income of the previous year in which the whole amount is received or receivable, and the other half as the income of the next succeeding previous year; and*
- (ii) *where the time so taken is twenty-four months, or more, one-third of the amount of such lump sum, royalties or fees as the income of the previous year in which the whole amount is received or receivable, and one-third of the said amount as the income of each of the two next succeeding previous years.*

Explanation.—For the purposes of this section, the expression ‘author’ includes a joint author, and the expression ‘lump sum’, in regard to royalties or copyright fees, includes an advance payment on account of such royalties or copyright fees which is not returnable.

M—Liability of State Governments.

.....Income-tax payable on the interest..... on any security of the State Government issued free shall be payable by the State Government at such rate as may be laid down by any Central Act.

Section 188.
Interest on
income-tax
free securities
of a State
Government.
[s. 8, 3rd
prov.]

CHAPTER XVI

SPECIAL PROVISIONS APPLICABLE TO FIRMS

A—Assessment

Section 189
Assessment of registered firms

[s 23 (5) opening lines]

[s 23(5) (a), main para]

(1) Notwithstanding anything contained in sections 147 and 148 [section 23(1) to (4)], and subject to the provisions of sub section (3), in the case of a registered firm, after assessing the total income of the firm,—

(i) the income-tax payable by the firm itself shall be determined, and

(ii) the share of each partner in the income of the firm shall be included in his total income and assessed to tax accordingly

[s 23(5)(a) 1st Provis]

(2) If such share of any partner is a loss it shall be set off against his other income or carried forward and set off in accordance with the provisions of sections 72 to 80 [24(1) and (2)]

[s 23(5)(a), and Proviso]

(3) When any of the partners of a registered firm is a non-resident, the tax on his share in the income of the firm shall be assessed on the firm at the rate or rates which would be applicable if it were assessed on him personally, and the tax so assessed shall be paid by the firm

Section 190

Assessment of cer—
unregistered firms

[s 23(5)(b)]

In the case of an unregistered firm, the Income-tax Officer—

(a) may determine the tax payable by the firm itself on the basis of the total income of the firm, or

(b) if, in his opinion, the aggregate amount of the tax payable by the partners if the firm were treated as a registered firm would be greater than the aggregate amount of the tax which would be payable by the firm under clause (a) and the tax which would be payable by the partners individually, may proceed to make the assessment under section 189(1)(ii) [23(5)(a)(ii)] as if the firm were a registered firm and where the procedure specified in this clause is applied to any unregistered firm, the provisions of section 189(2) and 189(3) [1st and 2nd provisos to section 23(5)(a)] shall apply there-to as they apply in the case of a registered firm

B—Registration.

Section 191

Application for registration

[s 26 A (i)]

(1) An application for registration of a firm for the purposes of this Act may be made to the Income-tax Officer on behalf of any firm if—

(i) the partnership is evidenced by an instrument, and

Clause 191

(i) the individual shares of the partners are specified in that instrument, or can be ascertained from that instrument with or without the aid of the instruments of partnership of any other connected firms.

(2) Such application may, subject to the provisions of ^[New] this section, be made either during the existence of the firm or after its dissolution.

(3) The application shall be made to the Income-tax Officer having jurisdiction to assess the firm, and shall be signed—

(a) by all the partners (not being minors) personally, ^[s. 26A (2), part, read with Rule 2, second para, part] or

(b) in the case of a dissolved firm, by all persons (not being minors) who were partners in the firm immediately before its dissolution and by the legal representative of any such partner who is deceased.

(4) The application shall be made before the end of the previous year for the assessment year in respect of which registration is sought: ^[s. 26A (2), part, read with Rule 2, Second para, part]

Provided that the Income-tax Officer may entertain an application made after the end of the previous year, if he is satisfied that the firm was prevented by sufficient cause from making the application before the end of the previous year.

(5) The application shall be accompanied by the original instrument evidencing the partnership, together with a copy thereof: ^[s. 26A (2) part, read with Rule 3]

Provided that if the Income-tax Officer is satisfied that for sufficient reason the original instrument cannot conveniently be produced, he may accept a copy of it certified in writing by all the partners (not being minors), or, where the application is made after the dissolution of the firm, by all the persons referred to in clause (b) of sub-section (3), to be a correct copy, or a certified copy of the instrument; and in such cases the application shall be accompanied by a duplicate copy of the original instrument:

Provided further that where the individual shares of the partners are not specified in the instrument of partnership, the provisions of this section shall apply also in relation to the instruments of partnership referred to in clause (ii) of sub-section (1) as they apply in relation to the instrument evidencing the partnership of the firm to be registered.

(6) The application shall be made in the prescribed form and shall give the following particulars— ^[s. 26A (2), part, read with Rule 3, Form I, Schedule]

(i) the names and addresses of the partners of the firm during the previous year, together with their shares:

Clauses 191-192

- (ii) the dates of their admission to the partnership,
- (iii) the interest on capital or loans payable to the partners,
- (iv) the salary or commission or any other amount payable to the partners, and
- (v) the manner in which the profits of the firm were divided for the latest previous year for which such division has been made and the mode of distribution, that is to say, whether the distribution was made by crediting the accounts of the partners or in any other manner, or if the profits have not been divided the reason for not dividing the profits

[New]

[See Rule 6] (7) Where registration is granted to any firm for any assessment year, it shall have effect for every subsequent assessment year, provided there is no change in the constitution of the firm or the shares of the partners as evidenced by the instrument of partnership on the basis of which the registration was granted, and provided the firm furnishes, along with its return of income for the assessment year concerned, a declaration to that effect, in the prescribed form and verified in the prescribed manner

[New]

(8) Where any such change has taken place in the previous year, the firm shall apply for fresh registration for the assessment year concerned in accordance with the provisions of this section

Sect on 192
Procedure on
receipt of
application

[s 26A (2),
part read
with Rule 4]

(1) On receipt of an application for registration of a firm, the Income tax Officer shall inquire into the genuineness of the firm and its constitution as specified in the instrument of partnership (as read with the instruments of partnership referred to in clause (ii) of sub section (1) of section 191, where the case so requires), and—

[See Rule 4
(1)]

(a) if he is satisfied that there is or was during the previous year in existence a genuine firm with the constitution so specified, he shall pass an order in writing registering the firm for the assessment year,

[See Rule 4
(2)]

(b) if he is not so satisfied, he shall pass an order in writing refusing to register the firm.

[New]

(2) The Income tax Officer shall not reject an application for registration merely on the ground that the application is not in order, but shall intimate the defect to the firm and give it an opportunity to rectify the defect in the application within a period of one month from the date of such intimation

[New]

(3) If the defect is not rectified within such time, the Income tax Officer may reject the application

Clauses 192-193

(4) The Income-tax Officer shall finish the inquiry under this section before the expiry of a period of one year from the date of filing of the application, or before making an assessment on the firm for the assessment year, whichever is earlier. [New]

(5) Where a firm is registered for any assessment year, the Income-tax Officer shall record a certificate on the instrument of partnership or on the certified copy submitted in lieu of the original instrument, as the case may be, to the effect that the firm has been registered under this Act, for that assessment year; and where a declaration under section 191(7) [relevant sub-section of section for application for registration, to the effect that in the case of subsequent assessment year only a declaration need be sent] is furnished by the firm for any subsequent assessment year, he shall also endorse a note of such declaration having been furnished on the said instrument or certified copy [New] [See Rule 4 (1) part]

(6) Notwithstanding anything contained in this section, where, in respect of any assessment year, there is, on the part of a firm, any such failure as is mentioned in section 143 [S. 23(4), main para, earlier half, embodied in section re: best judgment assessment], the Income-tax Officer may refuse to register the firm for the assessment year. [s. 23 (4), main para, latter half, part]

(1) If, where a firm has been registered, or its registration has effect under section 191 (7) [newly added sub-section in section re: application for registration, to the effect that registration has effect for subsequent year], for any assessment year, the Income-tax Officer is of opinion that there was during the previous year no genuine firm in existence as registered and that the registration was obtained or continued by misrepresentation, he may, with the previous sanction of the Inspecting Assistant Commissioner and after giving the firm a reasonable opportunity of being heard, cancel the registration of the firm for that assessment year. [Section 193. Cancellation of Registration. [New] [See Rule 6B]

(2) If, where a firm has been registered or its registration has effect under section 191(7) [newly added sub-section in section re: application for registration, providing that registration once granted has effect for future years], for any assessment year, there is, on the part of the firm, any such failure in respect of the assessment year as is mentioned in section 143 [section 23(4), main para, earlier half, i.e., section for best judgment assessment], the Income-tax Officer may cancel the registration of the firm for the assessment year, after giving the firm not less than fourteen days' notice intimating his intention to cancel its registration and after giving it a reasonable opportunity of being heard. [s. 23 (4), main para, latter half, part] [s. 23 (4), Proviso]

Clauses 193-195

[New]

(3) Where the registration of a firm is cancelled for any assessment year, the Income-tax Officer shall amend the assessments of the firm and its partners for that assessment year on the footing that the firm is an unregistered firm

[New]

(4) The provisions of section 161 [35 (1) to (4)] shall, mutatis mutandis, apply to the amendments of the assessments of the firm and its partners under sub-section (3) the period of four years specified in section 161 (7) [S 35 (1)] being reckoned from the date of the order cancelling the registration

[New]

(5) No order cancelling the registration of a firm for any assessment year shall be made after the expiry of eight years from the end of that assessment year

C—Changes in constitution, succession and dissolution

Sect on 194
Change in
constitution
of a firm.
[S 26 (1)]

(1) Where, at the time of making an assessment under section 147 or 148 [23] it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making the assessment.

Provided that the income of the previous year shall, for the purposes of inclusion in the total incomes of the partners, be apportioned between the partners who, in such previous year, were entitled to receive the same

Provided further that when the tax assessed upon a partner cannot be recovered from him it shall be recovered from the firm as constituted at the time of making the assessment.

[New]

(2) For the purposes of this section, there is a change in the constitution of the firm—

- (a) if one or more of the partners cease to be partners or one or more new partners are admitted, in such circumstances that one or more of the persons who were partners of the firm before the change continue as partner or partners after the change, or
- (b) where all the partners continue with a change in their respective shares or in the shares of some of them.

Where a firm carrying on a business, profession or vocation is succeeded by another firm, and the case is not one covered by section 194 [26 (1)], relating to changes in the constitution of the firm, separate assessments shall be made on the predecessor firm and the successor firm in accordance with the provisions of section 180 [26(2)]

[New]

Clauses 196-197

(1) Where any business, profession or vocation carried on by a firm has been discontinued, or where a firm is dissolved,—

Section 196.
Firm dissolved or business discontinued.

(a) the Income-tax Officer shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place; and

[s. 44 (1), part]

(b) every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such partner who is deceased, shall, in respect of the income of the firm, be jointly and severally liable for the amount of tax payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment

[s. 44 (3), part]

(2) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the persons referred to in sub-section (1) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

[New]

(3) The provisions of sub-sections (1) and (2) shall, *mutatis mutandis* and so far as may be, apply in relation to any penalty or other sum chargeable under any provision of this Act, as they apply in relation to tax.

[s. 44(2), part
s. 44 (3), part]

(4) Nothing in this section shall affect the provisions of section 170 (2) [24B (1), portion limiting liability of legal representative to extent of estate.]

[New]

D—Other provisions.

(1) Besides the provisions contained in this Chapter, the following are the provisions of this Act specially relevant in respect of firms—

Section 197.
List of other provisions.
[New]

Section 6, clause (2).. [4A (b)] relating to residence of firms.¹

Section 28 (ii) .. [10(5A) part] relating to charge of compensation etc. for managing agency.

Section 40 (b) .. [10 (4) (b)] relating to inadmissibility of interest, salary, commission or remuneration paid to a partner.

Sections 76 & 77.. [24 (1) 2nd proviso part, 24 (2) proviso (c) and (d) [24 (2) proviso part] relating to loss of a registered firm or an unregistered firm treated as registered. so]

Section 78 .. [24 (1) 2nd proviso, part and 24 (2) proviso (c) part] relating to loss of an unregistered firm.

¹. Underlining of sections in the list has not been done, for facility of reading.

Clauses 197-198

Section 79 (1)	[24 (2) Prov (c)] relating to set off of losses in cases of change of constitution in a firm
Section 123	[10 (5A) part] relating to computation of tax on compensation etc.
Section 138 clause (1)	[38 (1)] relating to information and returns by a firm
Section 165	[23 (6)] relating to intimation of shares
Section 280 (2) & 280 (4)	[28 (1) Prov so (d) and 28 (2)] relating to computation of penalty in the case of firms and penalty for wrong proportionment of shares
Section 320 (2) (a)	[13] relating to service of notices in the case of firms
Section 321 (2)	[Newly added section in Misc. Chapter] relating to service of notices in the case of dissolved firms

(2) The list of provisions given in sub-section (1) is for convenience of reference only

CHAPTER XVII SPECIAL PROVISIONS APPLICABLE TO COMPANIES

(1) The following provisions of this Act are specially relevant in respect of companies, namely ² —

Section 198. List of provisions applicable to companies [New]	Section 5 clause (3) [4A(c)] relating to residence of a company,
	Section 20 [8 Expln] relating to deductions in the case of a banking company under the head 'interest on securities',
	Section 28 (ii) [10 (5A)] relating to compensation etc., to a managing agent,
	Section 47 (iii) [12B (1) and prov] relating to transfer of capital assets to a subsidiary company,
	Section 85(5) [15C (5)] relating to non applicability of section 85 [15C] to profits and gains to which section 113 [22A] applies,
	Section 108 [56A] relating to exemption from tax of dividends from certain Indian companies,
	Section 109 (2) [15B (1) 1st prov] relating to non applicability of section 109 [15B] for super tax in relation to companies,
	Sections 113 to 120 [23A] relating to additional super-tax,
	Section 123 (1) [10(5A) part] relating to computation of tax where total income includes compensation etc.,
	Section 126 [17 (7)] relating to computation of tax where total income includes capital gains,
	Section 139 [39] relating to powers of the Income tax Officer etc. to examine registers,

¹ Provisions applicable only to partners have not been included

² The list of sections has not been underlined, for facility of reading

Clauses 198-201

Section 166 (4)	[19A]	relating to information and return regarding dividends;
Section 167	[20]	relating to certificates in respect of tax on dividends;
Section 203	[18 (3D)]	relating to deduction of super tax from dividends;
Section 254 (a)	[30 (1) prov.]	relating to appeals against an order under section 113 [23A];
Section 320 (2)(b)	[63]	relating to service of notices.

(2) *The list of provisions given in sub-section (1) is for convenience of reference only.*

CHAPTER XVIII

COLLECTION AND RECOVERY OF TAX.

A—General.

(1) *Notwithstanding that the regular assessment in respect of any income is to be made in a later assessment year, the tax on such income shall be payable by deduction at source or by advance payment, as the case may be, in accordance with the provisions of this Chapter.* Section 199.
Deduction at source and advance payment.
[New]

(2) *Nothing in this section shall prejudice the charge of tax on such income under the provisions of section 3(1) [3].*

(1) *In the case of income in respect of which provision is not made under this Chapter for deducting income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of this Chapter, income-tax shall be payable by the assessee direct.* Section 200.
Direct payment.
[s. 19]

(2) *Save as provided in this Chapter, super-tax shall be payable by the assessee direct.* [s. 58 (2)]

B—Deduction at source.

(1) *Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax and super-tax on the amount payable at a rate representing the average rate of income-tax and average rate of super-tax, respectively, in force for the financial year in which the payment is made, on the estimated.....income of the assessee under this head for that financial year.* Section 201.
Salary.
[s. 18 (2),
main para]

(2) *Any person responsible for paying any income chargeable under the head "Salaries" to a non-resident shall, at the time of payment, deduct.....tax on the estimated income of the assessee under this head for the financial year in accordance with the provisions of section 124 [section 17(1)].* [s. 18 (2B),
main para]

Clauses 201-203

[s 18 (2),
proviso]

(3) The person responsible for making the payment referred to in sub-section (1) or (2) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year

[New]

(4) The trustees of a recognised provident fund, or any person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall in cases where section 297(1) [58G (3)] applies, at the time an accumulated balance due to an employee is paid make therefrom the deduction provided for in section 298 [58H]

[N w]

(5) Where any amount standing to the credit of an employee in an approved superannuation fund is paid to the employee, income tax on the amount so paid shall be deducted by the trustees of the fund to the extent provided in section 313 [58S (2)]

[s 18 (2A),
latter part]

(6) For the purposes of deduction of tax on salary payable in foreign currency, the value in rupees of such salary shall be calculated at the prescribed rate of exchange

Sect on 202
Interest on
securities
[s 18 (3)
main para]

The person responsible for paying any income chargeable under the head "Interest on securities" shall at the time of payment,—

(a) unless otherwise prescribed in the case of any security of the Central Government deduct income-tax on the amount of the interest payable at the maximum rate and

[s 18 (3A),
main para]

(b) also deduct super-tax on such amount, when paid to a non-resident—

(i) in the case of a company, at the rate applicable to a company which has not made the arrangements for deduction of super-tax referred to in sect on 203 [18(3D)],

(ii) in the case of any other person, in accordance with the provisions of section 124(1)(b) [17(1)(b)]

Section 203
Dividends
[s 18 (D)
main para]

The principal officer of an Indian company or a company which has made such effective arrangements as may be prescribed for the deduction of super tax from dividends shall at the time of paying any dividend to a shareholder whom the principal officer has no reason to believe to be

Clauses 203-205

a resident, deduct super-tax on the amount of such dividend as increased in accordance with the provisions of section 59 [Section 16(2) main para, latter part], at the following rates:—

- (i) if the shareholder is a company, at the rate applicable to a company which has not made the arrangements for deduction of super-tax from dividends referred to above:
- (ii) if the shareholder is a person other than a company, in accordance with the provisions of section 124(1) (b) [Section 17(1) (b)].

(1) Any person responsible for paying to a non-resident.....any.....sum chargeable under the provisions of this Act, (not being income chargeable under the head "Salaries" or "Interest on securities", and not being a dividend) shall, at the time of payment, unless he is himself liable to pay any income-tax and super-tax thereon as an agent, deduct on such sum—

Section 204.
Other sums
[Sect on 18
(3B) main
para]

(a) income-tax at the maximum rate, and

(b) super-tax—

- (i) in the case of a company, at the rate applicable to a company which has not made the arrangements for the deduction of super-tax referred to in section 203 [18(3D)];
- (ii) in the case of any other person, in accordance with the provisions of section 124(1) (b) [17(1) (b)]:

Provided.....that nothing in this sub-section shall apply to any payment made in the course of transactions in respect of which a person responsible for the payment is deemed under section 173(1), Proviso [section 43, First Proviso] not to be an agent of the payee.

[s 18 (3B),
and prov.]

(2) Where the person responsible for paying any such sum.....(other than interest) to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Income-tax Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable, and upon such determination tax shall be deducted under sub-section (1) only on that proportion of the sum which is so chargeable.

[s. 18 (3C)]

(1) Where, in the case of any income in respect of which income-tax or super-tax is required to be deducted at the time of payment at a particular rate under the provisions of sections 201 to 204 [Section 18(2B) main para. Section 18(3) main para. Sec. 18(3A) main para. Section 18(3B) main para or Section 18(3D) main para], the Income-tax Officer is satisfied that the total income or the

Section 205
Certificate
for deduct on
at lower rate.
[Sec 18 (2B)
proviso, part,
18 (3). prov-
iso, (3A)]

Clauses 205-209

rov so (3B)
1st proviso
and (D),
proviso,] *total world income of the recipient justifies the deduction of income tax or super-tax at any lower rate or no deduction of income tax or super-tax, the Income-tax Officer shall, on an application made by the assessee in this behalf, give a certificate in writing to that effect*

[s. 18 (2B),
prov part] (2) *Where any such certificate is given, the person responsible for paying the income shall, until such certificate is cancelled by the Income-tax Officer, deduct income tax and super-tax at the rates specified in such certificate or deduct no tax, as the case may be*

Sect on 206
Tax dedu
cted is inco
me received
[S 18 (4)] *All sums deducted in accordance with the provisions of sections 201 to 204 [18(2) to 18(3D)] shall, for the purpose of computing the income of an assessee, be deemed to be income received*

Section 207
Credit for tax
deducted
[S 18 (5)
main para
earl or half,
part]
[S 18 (5)
main para,
latter half
part and 1st
prov] *Any deduction made in accordance with the provisions of sections 201 to 204 [18(2) to 18(3D)] shall be treated as a payment of income-tax or super-tax, as the case may be, on behalf of the person from whose income the deduction was made, or of the owner of the security or of the shareholder as the case may be, and credit shall be given to him for the amount so deducted (exclusive of any portion of such tax for which he obtains, in accordance with the provisions of this Act, a refund,) on the production of the certificate furnished under section 211 [sub-section (9) of section 18] , in the assessment, if any, made for the immediately following assessment year under this Act*

[s 18 (5) 2nd
prov, part] *Provided that where such person or owner or shareholder is a person whose income is included under the provisions of section 63 or 64 [clause (c) of sub-section (1) of section 16] section 67 [sub-section (3) of section 16] section 96 [44D] or section 97[44E] in the total income of another person the payment shall be deemed to have been made on behalf of, and the credit shall be given to such other person*

[s 18(5) 3rd
prov part] *Provided further that where any security or share in a company is owned jointly by two or more persons not constituting a partnership, credit in respect of the tax deducted may be given to each such person in the same proportion in which the interest on such security or dividend on such share has been included in his total income*

Sect on 208
Duty of per
son deduct
ing tax
[S 18 (6)] *Any person deducting any sum in accordance with the provisions of sections 201 to 204 [18(2) to 18(3D)] shall pay within the prescribed time the sum so deducted to the credit of the Central Government or as the Central Board of Revenue directs*

Section 209
Consequen
ce of failure
to deduct or
pay (1) *If any such person does not deduct or after deducting fails to pay the tax as required by or under sections 201 to 204 [18 (2) to 18 (3D)] he and in the cases specified in section 203 [Section 18(3D)] the principal officer and*

Clauses 209-212

the company of which he is the principal officer shall, [s. 18 (7)] without prejudice to any other consequences which he or it may incur, be deemed to be an assessee in default in respect of the tax:

Provided that *no interest shall be charged under section 230 [Section 46 (1)] from such person, principal officer or company unless the Income-tax officer is satisfied that such person or principal officer, as the case may be, has wilfully failed to deduct and pay the tax.*

(2) *Where the tax has not been paid as aforesaid after it is deducted, it shall be a first charge upon all the assets of the person, or the company, as the case may be, referred to in sub-section (1).* [New]

The power to levy by deduction under sections 201 to 204 [section 18 (2) to (3D)] shall be without prejudice to any other mode of recovery.

Section 210.
Deduction only one mode of recovery.
[s. 18 (8)]

Every person deducting income-tax or super-tax in accordance with the provisions of sections 201 to 204 [Sub-sections (2), (2B), (3), (3B), (3C), or (3D), of section 18] shall, at the time of payment of the sum from which tax has been deducted, furnish to the person to whom such payment is made, a certificate to the effect that income-tax or super-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed.

Section 211.
Certificate for tax deducted
[s. 18 (9)]

For the purposes of sections 201 to 211 [All sections incorporating any part of section 18] and section 166(1) [20A] the expression "person responsible for paying" means—

Section 212.
Person responsible for paying.
[S. 18 Expl.]

- (i) in the case of payments of income chargeable under the head "Salaries" other than payments by the Central Government or the Government of a State, the employer himself or if the employer is a company, the company itself including the principal officer thereof;
- (ii) in the case of payments of income chargeable under the head "Interest on securities" other than payments made by or on behalf of the Central Government or the Government of a State, the local authority or company including the principal officer thereof;
- (iii) in the case of payments of any other sum chargeable under the provisions of this Act, not being income chargeable under the head "Interest on securities", the payer himself or if the payer is a company, the company itself including the principal officer thereof.

Clauses 213-217

Section 213
Bar against
demand on asses-
see
[S 7 (1) and
provision ex-
tended]
Section 214
Saving regard-
ing tax de-
emed to have
been paid on
dividends
[New]

Where tax is deductible at the source under sec-
tions 201 to 204 [section 18(2), 18(2A), 18(3), 18(3A), 18(3B),
18(3C) or 18(3D)], the assessee shall not be called upon
to pay the tax himself unless he has received the income
without such deduction

The provisions of section 207 [section re: credit for
tax deducted at source—i.e. parts of s 18(5)] are without
prejudice to those of section 246 [section re: tax deemed
to have been paid on dividends—existing s 18(5), part and
s 49B]

C—Advance payment of tax.

Section 215
Advance tax
and income
subject to ad-
vance tax

[s 18A (1)(a)
main para
earlier half
part, read
with S 18A
(2)]

[New]

(1) Tax shall be payable in advance in accordance
with the provisions of sections 216 to 228 [All other sec-
tions embodying any part of section 18A] in the case of
income in respect of which provision is not made under
sections 201 to 204 [sections embodying section 18(2), 18
(2A), 18(2B) 18(3), 18(3A), 18(3B) and 18(3C)] for deduc-
tion of income-tax at the time of payment and which is
not chargeable under the head 'Capital gains'.

(2) Such income is hereinafter in this Chapter refer-
red to as "income subject to advance tax", and such tax
is hereinafter in this Chapter referred to as "advance tax".

[New]

(3) The provisions of this section shall, in relation to
any dividend which is to be increased under the provi-
sions of section 59 [section 16(2), main para, part regard-
ing increase of dividends], apply only for the purposes of
super tax.

Advance tax shall be payable in the financial year—

Section 216
Computation of
liability to
pay advance
tax.

[s 18A (1)
(a) main para
earlier half
part]

(a) where the total income of the assessee referred to
in section 217 (a) (1) [18A (1) (a), main para, ear-
lier half, part, as embodied in the draft section
relating to "computation of advance tax"]
exceeded the maximum amount not chargeable to
income tax in his case by two thousand five hun-
dred rupees, or

(b) where it is payable by virtue of the provisions of
section 220(3) [s 18A(3)]

Section 217
Computation of
advance
tax.

[New]

[s 18 (1) (a)
main para
earlier half
part]

Subject to the provisions of section 215(3) [sub-clause
newly added re: advance tax on dividends] the amount of
advance tax payable by an assessee in the financial year
shall be computed as follows —

(a) (i) his total income of the latest previous year
in respect of which he has been assessed shall
first be ascertained

Clauses 217-218

- (ii) so much of such total income as consists of income which was or could have been subject to advance tax in that previous year shall next be ascertained;
- (iii) income-tax and super-tax shall then be calculated [s. 18A(1) on the last mentioned income at the average rate (a), main para, latter half, part.] of income-tax and the average rate of super-tax respectively applicable in the financial year to the total income determined for the said previous year;
- (iv) the sum total of income-tax and super-tax so calculated shall, subject to the provisions of clauses (b) and (c), be the advance tax payable;
- (b)in cases where under the provisions of section [s. 18A(1) 124(2), or 124 (3) [section 17(1) 1st Proviso], the tax (a), main para, latter half, part.] payable by the assessee is to be determined with reference to his total world income, the advance tax payable by him shall bear to the total amount of income-tax and super-tax which would have been payable on his total world income of the said previous year had it been his total income the same proportion as the amount of the income subject to advance tax which is included therein bears to his total world income;
- (c) in cases where an estimate is sent by the assessee [New.] under section 220(1) or 220(2) [18A(2)] or section 220(3) [18A(3)], the total income so estimated shall, for the purposes of calculation of tax under this section, be substituted for the total income referred to in clauses (a) and (b), and the income subject to advance tax so estimated shall be substituted for the income to be ascertained under item (ii) of clause (a).

Explanation.—.....If the assessee is a partner of a [s. 18A(1) registered firm and an assessment of the firm has been 2nd Prov.] completed for a previous year later than the latest previous year for which the assessee's.....assessment has been completed, his share in the income of the firm shall, for the purposes of clauses (a) and (b), be included in his total income on the basis of the said assessment of the firm.

(1) Where a person has been previously assessed under this Act or under the Indian Income-tax Act, 1922, the Income-tax Officer may, on or after the 1st day of April in the financial year, by order in writing require him to pay.....to the credit of the Central Government, advance tax determined in accordance with the provisions of sections 215, 216 and 217 [s. 18A(1) (a) as embodied in other sections]. Section 218. 11 of 1922. Order by Income-tax Officer. [s. 18A(1) (a) main para, earlier half, part.]

(2) The notice of demand issued under section 163 [29] in pursuance of such order shall specify the instalments in which the advance tax is payable under section [s. 18A(1) (a), main para, latter half, part.]

Clauses 218-220

219 [s 18A(1), (a) earlier half, part and 1st Proviso and section 18A(1) (b) and newly added provision, as embodied in the draft section relating to instalment]

[s 18A(1) 3rd Prov] (3) If after the making of an order by the Income tax Officer under this section and before the 15th day of February of the financial year an assessment of the assessee (or of the registered firm of which he is a partner) is completed in respect of a previous year later than that referred to in the order of the Income-tax Officer the Income tax Officer may make an amended order requiring the assessee to pay in one instalment on the specified date, or in equal instalments on the specified dates, if more than one, falling after the date of the amended order the advance tax computed on the revised basis as reduced by the amount if any, paid in accordance with the original order, but if the amount already paid exceeds the advance tax determined on the revised basis the excess shall be refunded

Section 219 Instalments of advance tax (1) Subject to the provisions of this section and of section 220 [18A(2) and 18A(3)] advance tax shall be payable in equal instalments on the 15th day of June, 15th day of September 15th day of December and 15th day of March in the financial year

[s 18A(1) (a), main para earlier half, part]

[s 18A(1) (a), 1st prov]

Provided that where the previous year of the assessee in respect of any source of income ends after the 31st day of December and before the 30th day of April, the advance tax on that source of income shall, subject as aforesaid be payable in three equal instalments on the 15th day of September the 15th day of December and the 15th day of March respectively

[s 18A(1) (b)] (2) If the notice of demand issued under section 163 [29] in pursuance of the order under section 218 [section 18A(1) (a) main para earlier half part relating to order of Income tax Officer] is served after any of the dates on which the instalments specified therein are payable, the advance tax shall be payable in equal instalments on each of such of those dates as fall after the date of the service of the notice of demand or in one sum on the 15th day of March if the notice is served after the 15th day of December

Section 220

Estimate by assessee.

[s 18(2) main para]

(1) If any assessee who is required to pay advance tax by an order under section 218 [s 18A sub-section (1) (a) main para earlier half part re Order by Income-tax Officer] estimates at any time before the last instalment is due that his total income or income subject to advance tax for the period which would be the previous year for the immediately following assessment year, is less than the total income on the basis of which, or the income on which, he is

Clause 220

required to pay such tax, as the case may be, and accordingly wishes to pay an amount less than the amount which he is so required to pay, he may send to the Income-tax Officer—

- (i) an estimate of the total income for that period,
- (ii) an estimate of the income subject to advance tax for that period, and
- (iii) an estimate of the advance tax payable by him calculated in the manner laid down in section 217 [s. 18A(1) (a) main para, part, as embodied in section re: computation of tax]. He shall pay such amount as accords with his estimate in equal instalments on such of the dates specified in section 219 [s. 18A(1) (a) main para, earlier half, part as embodied in draft section re: instalments] as have not expired or in one sum if only the last of such dates has not expired.

(2)The assessee may send a revised estimate of [s. 18A(2), the advance tax payable by him before any one of the dates ^{Prov.]} specified in section 219 [s. 18A(1) (a), main para, earlier half, as embodied in draft section re: instalments] and adjust any excess or deficiency in respect of any instalment already paid in a subsequent instalment or in subsequent instalments.

(3) Any person who has not previously been assessed [S. 18A(3)] under this Act or under the Indian Income-tax Act, 1922, ^{11 of 1922.} shall, before the 15th day of March in each financial year, if his total income of the period which would be the previous year for the immediately following assessment year is likely to exceed the maximum amount not chargeable to income-tax in his case by two thousand five hundred rupees, send to the Income-tax Officer—

- (i) an estimate of the total income of the said previous year;
- (ii) an estimate of the income subject to advance tax of the said previous year; and
- (iii) an estimate of the advance tax payable by him..... calculated in the manner laid down in section 217 [s. 18A(1) (a) main para, earlier half, part as embodied in section re: computation of tax], and shall pay such amount as accords with his estimate, on such of the dates specified in section 219 [s. 18A(1) (a), main para, earlier half, as embodied in section part re: instalment] as have not expired, by instalments which may be revised according to sub-section (2) [proviso to s. 18A(2)].

Clauses 220-223

[New]

(4) Every estimate under this section shall be sent in the prescribed form and verified in the prescribed manner

Section 221

Commission
received

[S 18A(4)]

Where part of the income subject to advance tax consists of any income of the nature of commission which is receivable periodically and is not received or adjusted by the payer in the assessee's account before any of the quarterly instalments of advance tax become due, he may defer payment of advance tax on that part of his income to the date on which such income would be normally received or adjusted and if he does so he shall communicate to the Income-tax Officer the date to which such payment is deferred

Provided that, if the advance tax of which the payment is deferred is not paid within fifteen days of the date on which such income or part thereof is received or adjusted by the payer in the assessee's account, the advance tax shall be payable with four per cent simple interest per annum from the date of such receipt or adjustment to the date of payment of the advance tax.

Section 222

Interest payable
by Government[S 18A(5),
main para
part][S 18A(5),
2nd Prov]

(1) The Central Government shall pay simple interest at four per cent per annum on the amount by which the aggregate sum of any instalments of advance tax paid during any financial year in which they are payable under sections 215 to 221 [All sections embodying any part of section 18A(1), 18A(2), 18A(3) of 18A(4)] exceeds the amount of the tax determined on regular assessment, from the 1st day of April next following the said financial year to the date of the regular assessment for the assessment year immediately following the said financial year

[S 18A(5),
1st Prov]

(2) On any portion of such amount which is refunded under the provisions of sections 215 to 221 [section 18A(1) to (4)] interest shall be payable only up to the date on which refund was made

Section 223

Interest payable
by assessee[S 18A(6),
main para
and 1st prov]

(1) Where in any financial year an assessee has paid advance tax under section 220(1) or 220(2) [sub-section (2) of s 18A] or section 220(3) [sub-section (3) of s 18A] on the basis of his own estimate, and the advance tax so paid is less than eighty per cent of the tax determined on the basis of the regular assessment, so far as such tax relates to income subject to advance tax and so far as it is not due to variations in the rates of tax made by the Finance Act enacted for the year for which the regular assessment is made, simple interest at the rate of four per cent per annum from the 1st day of April next following the said financial year up to the date of the said regular assessment shall be payable by the assessee upon the amount by which the advance tax so paid falls short of the said eighty per cent

¹ See also alternative draft in the Notes on Clauses

² Existing section 18 A(6) 1st Proviso, prescribes, the rate of four per cent as from 1st April, 1952

Clauses 223-225

(2).....Where provisional assessment is made under section 145 [23B],— [s. 18A (6)
2nd Prov.]

- (i) interest shall be calculated in accordance with the foregoing provision up to the date on which the tax as provisionally assessed is paid, and
- (ii) thereafter interest shall be calculated at the rate aforesaid on the amount by which the tax as so assessed (in so far as it relates to *income subject to advance tax*) falls short of the said eighty per cent.

(3) ...Where as a result of an order under section 259 [31] or section 272 [33A] or section 161 or 162 [35] or section 263 [66], or section 269 [66A], the amount on which interest was payable under this section has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded together with the amount of income-tax that is refundable. [s. 18A (6)
3rd Prov.]

(4)...In such cases and under such circumstances as may be prescribed, the Income-tax Officer may reduce or waive the interest payable by the assessee *under this section*. [s. 18A (6)
5th Prov.]

Where, on making the regular assessment, the Income-tax Officer finds that any assessee has— Section 224.
Interest payable by assessee in case of under-estimate etc.
[s. 18A (7)]

(a) under section 220(1) or 220(2) [s. 18A(2)] or section 220(3), [s. 18A(3)] under estimated the *advance tax* payable by him and thereby reduced the amount payable in any of the first three instalments, or

(b) under section 221 [s. 18A(4)] wrongly deferred the payment of *advance tax* on a part of his income, he may direct that the assessee shall pay simple interest at four per cent. per annum—

(i) in the case referred to in clause (a), for the period during which the payment was deficient on the difference between the amount paid in each such instalment and the amount which should have been paid having regard to the aggregate *advance tax* actually paid.....during the year, and

(ii) in the case referred to in clause (b), for the period during which the payment of *advance tax* was.....so deferred.

Explanation.—...For the purposes of this section, any instalment due before the expiry of six months from the commencement of the previous year in respect of which it is to be paid shall be deemed to have become due fifteen days after the expiry of the said six months.

(1) Where, on making the regular assessment, the Income-tax Officer finds that no payment of *advance tax* has been made in accordance with the provisions of sections 215 to 220 [s. 18A(1), 18A(2), 18A(3)], interest calculated in Section 225.
Interest where no estimate made
[s. 18A (8)]

the manner laid down in section 223(1) and 223(2) [s 18A(6), main para, and 1st Proviso and 2nd proviso] shall be added to the tax as determined on the basis of the regular assessment

[New]

(2) The provisions of section 223(3) [s 18A(6), 3rd Prov] and of section 223(4) [s 18A(6), 5th Prov] shall apply to interest payable under this section as they apply to interest payable under section 223 [s 18A(6)].

Section 226
When assessee deemed to be in default [18A(10)]

(1) If any assessee does not pay on the specified date any instalment of advance tax that he is required to pay under section 218 [section 18A(1)] and does not, before the date on which any such instalment as is not paid becomes due, send under section 220(1) or section 220(2) [s 18A(2)] an estimate or a revised estimate of the advance tax payable by him, he shall be deemed to be an assessee in default in respect of such instalment or instalments

(2) If any assessee has sent under section 220(1) or 220(2) [18A(2)] or section 220(3) [18A(3)] an estimate or a revised estimate of the advance tax payable by him, but does not pay any instalment in accordance therewith on the date or dates specified in section 219 [s 18A(1) (a), main para, earlier half, part embodied in section re instalments], he shall be deemed to be an assessee in default in respect of such instalment or instalments :

Provided that the assessee shall not, under sub-section (1) or this sub section, be deemed to be in default in respect of any amount of which the payment is deferred under section 221 [s 18A(4)] until after the date communicated by him to the Income-tax Officer under section 221 [s 18A(4)]

Section 227
Credit for advance tax [s 18A (11)]

Any sum other than a penalty or interest paid by or recovered from an assessee in pursuance of the provisions of sections 215 to 226 [all sections embodying any part of section 18A(1) to 18A(10)] shall be treated as a payment of tax in respect of the income of the period which would be the previous year for an assessment for the assessment year next following the financial year in which it was payable, and credit therefor shall be given to the assessee in the regular assessment

Section 228
Exclusion of capital gains [s 18A (12)]

Any income chargeable under the head "Capital gains" shall not be taken into account for any of the purposes of sections 215 to 227 [All other sections embodying any part of section 18A], and the expressions "total income" and "total world income" occurring in any of those sections shall accordingly be construed as not including such income

Section 229
When tax payable and when assessee deemed in default

D—Collection and Recovery

(1) Any amount specified as payable in a notice of demand under section 163 [29] shall be paid within the time, at the place and to the person mentioned in the

Clauses 229-230

notice....., or if a time is not so mentioned, then on or before the expiry of a period of forty-five days from the date of the service of the notice. [s. 45, main para, part]

(2) On an application made by the assessee before the expiry of the due date under sub-section (1), the Income-tax Officer may extend the time for payment or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case. [New]

(3) If the amount is not paid within the time limited under sub-section (1) or extended under sub-section (2), as the case may be, at the place and to the person mentioned in the said notice, the assessee.....shall be deemed to be in default. [s. 45, main para, part]

(4) If, in a case where payment by instalments is allowed under sub-section (2), the assessee commits default in paying any one of the instalments within the time fixed under that sub-section, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default. [New]

(5).....Where an assessee has presented an appeal under section 254 [30], the Income-tax Officer may, in his discretion, and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default, in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of. [s. 45, 1st Prov.]

(6).....Where an assessee has been assessed in respect of income arising outside India in a country the laws of which prohibit or restrict the remittance of money to India, the Income-tax Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which, by reason of such prohibition or restriction, cannot be brought into India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed. [s. 45, 2nd Prov.]

Explanation.—For the purposes of this section, income shall be deemed to have been brought into India if it has been utilised or could have been utilised for the purposes of any expenditure actually incurred by the assessee without India or if the income, whether capitalised or not, has been brought into India in any form. [s. 45, Expl.]

(1) When an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears, be liable to pay, by way of Section 230. Interest payable when tax in default [s. 46 (1)]

penalty, simple interest from the date of default to the date of payment at the rate of ten per cent per annum on the amount of arrears

(2) If the arrears of tax are paid within three months from the due date, the interest by way of penalty levied or leviable thereon under sub-section (1) shall be remitted

(3) No interest shall be charged under sub section (1) in respect of any period for which the assessee is, by virtue of any provision of this Act, treated as not in default.

Sect on 231
Certificate to
Collector
[s 46(2)]

(1) When an assessee is in default or is deemed to be in default in making a payment of tax, the Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from the assessee, and the Collector, on receipt of such certificate shall proceed to recover from such assessee the amount specified therein by one or more of the modes mentioned below, in accordance with the procedure laid down in the Second Schedule—

- (a) attachment and sale of the assessee's movable property,
- (b) attachment and sale of the assessee's immovable property,
- (c) arrest of the assessee and his detention in prison,
- (d) appointing a receiver for the management of the assessee's movable and immovable properties

[s 46(7) Expl
latter half
part]

(2) The Income tax Officer may issue a certificate under sub-section (1) notwithstanding that proceedings for recovery of the arrears by any other mode have been taken

Sect on 232
Collector to
whom certificate is to be
issued
[New]

(1) The Income-tax Officer may forward the certificate referred to in section 231 [46(2), main para] to—

- (a) the Collector within whose jurisdiction the assessee carries on his business, profession or vocation or within whose jurisdiction the principal place of his business, profession or vocation is situate, or
- (b) the Collector within whose jurisdiction the assessee resides or any movable or immovable property of the assessee is situate

(2) If the Collector to whom a certificate is sent by an Income tax Officer is not able to recover the entire amount by sale of the property, movable and immovable, but has information that the assessee has property in a district within the jurisdiction of another Collector, he may send the certificate to such other Collector or to a Collector within whose jurisdiction the assessee resides, and thereupon

Clauses 232-234

that Collector shall proceed to recover the amount under this Chapter as if the certificate was sent to him by the Income-tax Officer.

Explanation.—In this section, “Collector” means a Collector of a district in any part of India, and includes an Additional Collector of any such district.

(1) When the Income-tax Officer sends a certificate to a Collector under section 231 [46(2) main para] it shall not be open to the assessee to dispute before the Collector the correctness of the assessment, and no objection to the certificate on any ground shall be entertained by the Collector. Section 233. Validity of certificate, and amendment thereof. [New]

(2) An assessee objecting to the issue of any certificate, on any ground open to him, other than the correctness of the assessment, may apply to the Income-tax Officer for withdrawal or cancellation of the certificate, and the Income-tax Officer shall, after giving the assessee a reasonable opportunity of being heard, pass such orders as he thinks fit.

(3) Notwithstanding the issue of a certificate to a Collector, the Income-tax Officer shall have power to correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Collector.

(4) The Income-tax Officer shall intimate to the Collector any orders withdrawing or cancelling a certificate passed by him under sub-section (2), or any correction made by him under sub-section (3) or any amendment made under section 234(4) [sub-section in newly added section providing for amendment of certificate on reduction etc. in any proceeding under the Act].

(1) Notwithstanding that a certificate has been issued to the Collector for the recovery of any tax, the Income-tax Officer may grant time for the payment of the tax and thereupon the Collector shall stay the proceedings until the expiry of the time so granted. Section 234. Amendment or cancellation or withdrawal of certificate. [New]

(2) Where a certificate for the recovery of tax has been issued, the Income-tax Officer shall keep the Collector informed of any tax paid or time granted for payment, subsequent to the issue of such certificate.

(3) Where the order giving rise to a demand of tax for which a certificate for recovery has been issued has been reduced in appeal or other proceeding under this Act but is the subject-matter of further proceeding, the Income-tax Officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction, for the period for which the appeal or other proceeding remains pending.

(4) Where a certificate for the recovery of tax has been issued and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the Income-tax Officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate or withdraw it, as the case may be

Sect on 235
Other modes
of recovery
[s 46 Expl
latter half
part]

(1) Notwithstanding the issue a certificate to the Collector under section 231 [46(2) main para], the Income tax Officer may recover the tax by any one or more of the modes provided in this section.

[s 46 (5)]

(2) If any assessee is in receipt of any income chargeable under the head 'Salaries', the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Government, or as the Central Board of Revenue directs

5 of 1908

Salary exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure 1908 shall be exempt from any requisition made under this sub-section

[s 46 (5A)
1st para,
part]

(3) (i) The Income-tax Officer may, at any time or from time to time by notice in writing, require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee, to pay to the Income-tax Officer either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or held) so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount

[s 46 (5A),
1st para,
part]

(ii) A copy of the notice shall be forwarded to the assessee at his last address known to the Income-tax Officer

[s 46 (5A),
6th para]

(iii) Where a person to whom a notice under this sub-section is sent objects to it on the ground that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee then nothing contained in this sub section shall be deemed to require such person to pay any such sum or part thereof as the case may be, if the Income tax Officer is satisfied about the correctness of such objection

[s 46 (5A)
2nd para]

(iv) The Income-tax Officer may at any time or from time to time amend or revoke any notice issued under this sub section or extend the time for making any payment in pursuance of such notice

Clauses 235-238

(v) *The Income-tax Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.* [s. 46 (5A), 3rd para]

(vi) *Any person discharging any liability to the assessee after receipt of a notice under this sub-section shall be personally liable to the Income-tax Officer to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability.....for tax, interest and penalties, whichever is less.* [s. 46 (5A), 4th para]

(vii) *If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Income-tax Officer, further proceedings may be taken against him for the realisation of the amount as if it were an arrear of tax due from him, in the manner provided in sections 231 to 234 [S. 46(2)], and the notice shall have the same effect as an attachment of a debt by the Collector in exercise of his powers under section 231 [46(2)].* [s. 46 (5A), 5th para]

(4) *The Income-tax Officer may apply to the court in whose custody there is money belonging to the assessee for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax.* [New]

(5) *The Income-tax Officer may, if so authorised by the Commissioner, proceed to recover the tax by distraint and sale of the movable property of the assessee in the manner laid in the Third Schedule.* [s. 46 (3) and (4)]

If the recovery of tax in any area has been entrusted to a State Government under article 258(1) of the Constitution, the State Government may direct with respect to that area or any part thereof, that tax shall be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered. Section 236. Recovery through State Government [s. 46 (6)]

For the purposes of section 231 [46(2)], the expression "Collector" shall include a Collector in Pakistan, and the Income-tax Officer may forward a certificate under that section to a Collector in Pakistan through the Central Board of Revenue of Pakistan, if the assessee has property in the district of that Collector. Section 237. Recovery through Collector in Pakistan. [s. 46(8)]

Where a Collector in India receives through the Central Board of Revenue of India a certificate under the signature of an Income-tax Officer in Pakistan, the Collector shall proceed to recover the amount specified therein in the manner in which he would proceed to recover the amount specified in a certificate received from an Income-tax Officer in India, and shall remit any sum so recovered by him to the Income-tax Officer in Pakistan, after deducting his expenses in connection with the recovery proceedings. Section 238. Recovery of Pakistan tax. [s. 46 (9)]

Section 239
Condition for
recovery of
Indian tax in
Pakistan or
of Pakistan
tax in India
[s 46 (10)]

The provisions of sections 237 and 238 [Section 46(8) and (9)] shall remain in force only so long as there are in force similar provisions in the Indian Income-tax Act, 1922 as in force as part of the law of Pakistan or under any other similar Act forming part of the law of Pakistan for the recovery of tax by a Collector in Pakistan on receipt of a certificate from an Income-tax Officer in India

Section 240
Recovery of
penalties,
interest and
other sums
[s 47]

Any sum imposed by way of penalty under the provisions of section 282 [Sub-section (9) of section 18A], section 281 [Sub-section (2) of 25], section 280 [Section 23] or section 279 [Sub-section (6) of Section 44E], or payable under section 230 [Sub-section (1) of section 46], and any interest payable under the provisions of sections 221, 223, 224 and 225 [Sub-section (4), (6), (7) or (8) of section 18A] and any other sum payable under the provisions of this Act, shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax.

Section 241
Tax Clearance Certificate
[s 46A (1)]

(1) Subject to such exceptions as may be made by the Central Government, no person who is not domiciled in India, or who, even if domiciled in India at the time of his departure, has, in the opinion of an Income-tax authority, no intention of returning to India, shall leave the territory of India by land, sea or air unless he first obtains from such authority as may be appointed by the Central Government in this behalf (hereinafter in the section referred to as the "competent authority") a certificate stating that he has no liabilities under this Act, the Excess Profits Tax Act, 1940, or the Business Profits Tax Act, 1947, or the Indian Income-tax Act, 1922, or that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that person

15 of 1940
21 of 1947
11 of 1922

Provided that if the competent authority is satisfied that such person intends to return to India, he may issue an exemption certificate either in respect of a single journey or in respect of all journeys to be undertaken by that person within such period as may be specified in the certificate

[s 46A (2),
main para]

(2) If the owner or charterer of any ship or aircraft carrying persons from any place in the territory of India to any place outside India allows any person to whom sub-section (1) applies, to travel by such ship or aircraft without first satisfying himself that such person is in possession of a certificate as required by that sub-section he shall be personally liable to pay the whole or any part of the amount of tax, if any, payable by such person as the Income-tax Officer may, having regard to the circumstances of the case, determine

[s 46A (3)]

(3) In respect of any sum payable by the owner or charterer of any ship or aircraft under sub-section (2) the owner or charterer, as the case may be, shall be deemed to

Clauses 241-242

be an assessee in default for such sum, and such sum shall be recoverable from him in the manner provided in sections 230 to 240 [all sections, including sec: for interest, relating to recovery] as if it were an arrear of tax.

(4) The owner or charterer of every ship or aircraft, [New] which takes passengers on board on any port or place in India for any place outside India, shall, within one month from the departure of the ship or the aircraft from that port or place, furnish to the Commissioner having jurisdiction over the area in which that port or place is situated, a list in the prescribed form showing the name and last known address in India of every person (other than members of the crew and the staff of the ship or aircraft) who travelled on the ship or aircraft and the particulars of the certificate or the exemption certificate presented by such person under this section.

(5) No proceedings shall be commenced for enforcing [New] the liability under sub-section (2) after the expiry of two years from the date on which the list required to be filed under sub-section (4) is filed.

(6) The Central Government may make rules for regu- [s. 46A (4)] lating any matter necessary for, or incidental to, the purpose of carrying out the provisions of this section.

Explanation.—For the purposes of this section, the ex- [s. 46A (2),
pressions “owner” and “charterer” include any represen- Expl.]
tative, agent or employee empowered by the owner or
charterer to allow persons to travel by the ship or aircraft.

Save in accordance with the provisions of section 183 Section 242.
[Section 42(1)] or 229(6) [second proviso to section 45], Period for
and except as otherwise provided in section 241(5) [new commencing
sub-section in section 46A, laying down a limit of 2 years], recovery
no proceedings for the recovery of any sum payable under proceedings.
this Act shall be commenced after the expiration of one [s. 46 (7),
year from the last day of the financial year in which the main para]
demand is made, or, in the case of a person who is deemed
to be an assessee in default under any provision of this
Act, after the expiration of one year from the last day of
the financial year in which the Income-tax Officer sends an
intimation in writing to such person to the effect that he is
deemed to be an assessee in default:

Provided that the period of one year.....referred [s. 46 (7) 1st
to above shall be reckoned— Prov.]

- (i) where an assessee has been treated as not being in default under section 229(5) [Sec. 45, 1st proviso] as long as his appeal is undisposed of,from the last day of the financial year in which the appeal is disposed of;

Clauses 242-245

(ii) where recovery proceedings in any case have been stayed by any order of a court, from the last day of the financial year in which the order is withdrawn,

(iii) where the date of payment of tax has been extended by an Income-tax authority to another date from the last day of the financial year in which such other date falls,

(iv) where the sum payable is allowed to be paid by instalments, from the last day of the financial year in which the last of such instalments is due

Explanation—A proceeding for the recovery of any sum shall be deemed to have commenced within the meaning of this section, if some action is taken to recover the whole or any part of the sum within the period herein before referred to

The several modes of recovery specified in this Chapter shall not affect in any way—

(a) any other law for the time being in force relating to the recovery of debts due to Government, or

(b) the right of the Government, to institute a suit for the recovery of the arrears due from the assessee,

and it shall be lawful for the Income-tax Officer or the Government, as the case may be, to have recourse to any such law or suit notwithstanding that the tax due is being recovered from the assessee by any mode specified in this Chapter

E—Tax payable under provisional assessment

Sect on 244 Recovery of tax payable under provisional assessment. [s. 23B (5)] For the avoidance of doubt, it is hereby declared that the provisions of section 229, [all sections embodying any part of section 45] except section 229(5) [45, 1st Prov] and sections 230 to 239 [all sections embodying any part of section 46] apply in relation to any tax payable in pursuance of a provisional assessment made under sections 145(1) and 145(2) [s. 23B(1)] as if it were a regular assessment made under section 147 or 148 [23(1) to (5)]

Sect on 245 Tax paid by deduction or advance payment [s. 23B (6)] Tax paid or deemed to have been paid under sections 201 to 213 [all sections embodying any part of section 18] or sections 215 to 228 [all sections embodying any part of section 18A] in respect of any income provisionally assessed under sections 145(1) and 145(2) [section 23B(1)] shall be deemed to have been paid towards the provisional assessment

Clause 246

CHAPTER XIX

TAX DEEMED TO HAVE BEEN PAID ON DIVIDENDS

Section 246.

(1) Any sum by which a dividend has been increased under section 59 [section 16(2), main para, latter half] shall be treated as a payment of income-tax (exclusive of super-tax)..... by the shareholder and credit shall be given to him therefor on the production of the certificate furnished under section 167 [20], in the assessment, if any, made for the assessment year referred to in clause (b) of sub-section (2) :

Tax deemed to have been paid on dividends.

[s. 18 (5) main para, earlier half, part]

[s. 18 (5), main para latter half part]

Provided that, where such shareholder is a person whose income is included under the provisions of section 63 or 64 [clause (c) of sub-section (1) of section 16], section 67 [S. 16(3)], section 96 [44D] or section 97 [44E] in the total income of another person, the payment shall be deemed to have been made by, and the credit shall be given to, such other person :

[s. 18 (5), 2nd Proviso, part]

Provided further that where any share in a company is owned jointly by two or more persons not constituting a partnership, the credit may be given to each such person in the same proportion in which the dividend on such share has been included in his total income :

[s. 18 (5) 3rd Prov. part]

Provided further that where any share in a company is owned by two or more persons constituting a partnership and the firm is a registered firm or an unregistered firm assessed under the provisions of section 190(b) [23(5) (b)], the credit may be given to each such person in the proportion in which the profits of the firm are shared by him.

[New]

(2) The provisions of sub-section* (1) shall not apply unless the following conditions are fulfilled :—

(a) the company is assessed to income-tax in India or elsewhere; and

[s. 49B (1), part]

(b) the dividend is included in the total income of the shareholder or other person to whom credit is to be given, as assessed for the assessment year immediately following the previous year of which the dividend is deemed to be the income.

(3) For the purposes of sub-section (1), income-tax shall be deemed to include agricultural income-tax assessed on a company by any State Government, and where any shareholder proves that the company has been so assessed to agricultural income-tax, he shall be entitled to the reduction from the tax payable by him under this Act of a sum equal to—

[s. 49B(2)]

- (a) the appropriate agricultural income-tax (reduced by the amount of refund if any allowed to him by the State Government) or
- (b) the appropriate Indian Income-tax on the amount of the dividend which has not been increased under section 59 [Section 16(2) main para latter half]
- whichever is the less

Explanation—In this sub-section—

- (a) appropriate agricultural income-tax" means such proportion of the agricultural income-tax as the amount of dividend which has not been increased under section 59 [S 16(2) main para latter half] bears to the total profits of the company assessed to agricultural income-tax and
- (b) appropriate Indian Income-tax means such proportion of the income-tax payable by the shareholder under this Act as the amount of dividend which has not been increased under section 59 [S. 16(2) main para latter half] bears to the total income of the shareholder

CHAPTER XX

REFUNDS

If any person satisfies the Income-tax Officer

Section 247
Refunds

[s 48 (1)]

that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year he shall be entitled to a refund of the excess

Section 248.

Person entitled to claim refund in certain special cases.

[s 48 (2)]

[s 49 F]

(1) Where income of one person is included under any provision of this Act in the total income of any other person the latter alone shall be entitled to a refund under this Chapter in respect of such income

(2) Where through death incapacity bankruptcy liquidation or other cause a person is unable to claim or receive any refund due to him his executor administrator or other legal representative or the trustee or guardian or receiver as the case may be shall be entitled to claim or receive such refund for the benefit of such person or his estate.

Section 249.

Form of claim for refund and limitations.

[New]

(1) Every claim for refund under this Chapter shall be made in the prescribed form and verified in the prescribed manner

Clauses 249-254

(2) No such claim shall be allowed, unless it is made within four years from the last day of the assessment year in which the income in respect of which the claim is made was assessable. [Cf. Rules 36, 37]. [s. 50 main para.]

Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the Income-tax Officer shall, except as otherwise provided in this Act, refund the amount without any application by the assessee. Section 250. Refund on appeal etc. [s. 48 (2)]

In a claim under this Chapter, it shall not be open to the assessee to question the correctness of any assessment or other matter decided which has become final and conclusive or ask for a review of the same, and the assessee shall not be entitled to any relief on such claim except refund of tax wrongly paid or paid in excess. Section 251. Correctness of assessment not to be questioned. [s. 48 (4)]

If, within a period of three months from the date on which a claim for refund is made under this Chapter, the Income-tax Officer does not pass an order thereon, the Central Government shall pay the claimant simple interest at the rate of two per cent. per annum on the amount directed to be refunded from the date on which the claim is made to the date of the order directing the refund. Section 252. Interest. [New]

Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, Appellate Assistant Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the tax, interest or penalty, if any, remaining payable by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section. Section 253. Set off of refunds against tax remaining payable. [s. 49 E]

CHAPTER XXI

APPEALS AND REVISION

A. Appeals to the Appellate Assistant Commissioner.

Any assessee aggrieved by any of the following orders of an Income-tax Officer may appeal to the Appellate Assistant Commissioner against such order—

- (a) an order against the assessee, being a company, under section 113 [23A(1) main para, operative part]; Section 254. Appealable orders. [s. 30 (1), main para]¹
- (b) an order of assessment under section 147 or 148 [sections 23(1) to (5)], where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

¹As the section has been broken up into numerous clauses, reference to existing provision has not been given for each clause, and minor verbal changes have not been italicised.

Clause 254

- (c) an order under section 151 [27] refusing to reopen an assessment made under section 148 [23(4) main para, part authorising best judgment assessment],
- (d) an order under section 161 or 162 [section 35], where the assessee objects to the amendment made or refused thereunder,
- (e) an order adverse to the assessee, where the assessee denies his liability to be assessed under this Act,
- (f) an order under section 180(2) or 180(3) [section 26(2) Proviso],
- (g) an order under section 181 [25A],
- (h) an order refusing to register a firm under section 192(1)(b) [section in the Chapter on Firms relating to refusal of registration because there was no genuine firm in existence in the previous year] or under section 192(6) [section 23(4) main para, latter part relating to refusal to register a firm because of failure to file return etc. leading to best judgment assessment],
- (i) an order cancelling the registration of a firm under section 193(1) [section in the Chapter on Firms authorising cancellation of registration because there was no genuine firm] or under section 193(2) [section in the Chapter on Firms corresponding to section 23(4) main para, part, authorising cancellation on such failure as leads to best judgment assessment],
- (j) an order levying interest under section 224[18A(7)],
- (k) an order under section 229(5) [s 45 1st Prov],
- (l) an order under section 233(2) [new section re withdrawal of certificate],
- (m) an order under section 247 [48(1)],
- (n) an order imposing penalty under—
 - (i) section 279 [44E(6)], or
 - (ii) section 280 [28(1) & (2)], or
 - (iii) section 281 [25(2) latter part], or
 - (iv) section 282 [18A(9)]

Clauses 254-258

Explanation.—For the purposes of clause (b) an objection to any interest charged under section 223 [18A(6)] or section 225 [18A(8)] shall be treated as an objection to the amount of income assessed.

..... Where the partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may appeal to the Appellate Assistant Commissioner against any order of an Income-tax Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, *but he cannot agitate such matters.....in any appeal preferred against an order of assessment determining his own total income or loss.*

Section 255.
Appeal by partner.
[s. 30 (1) 2nd Prov.]

Any person having in accordance with the provisions of section 208 [sub-section (6) of section 18] read with section 208 [sub-section (6) of section 18] deducted and paid tax in respect of any sum chargeable under this Act other than interest, who denies his liability to make such deduction may appeal to the Appellate Assistant Commissioner to be declared not liable to make such deduction.

Section 256.
Appeal by person denying liability to deduct tax.
[s. 30 (1A)]

(1) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

Section 257.
Form of appeal and limitation.

(2) The appeal shall ordinarily be presented within thirty days of the following date, that is to say,—

[s. 30 (3)]
[s. 30 (2), part]

(a) *where the appeal relates to any tax deducted under section 204(1) [18(3B)], the date of payment of the tax, or*

(b) *where the appeal relates to any assessment, interest or penalty, the date of receipt of the notice of demand relating to the assessment, interest or penalty, or*

(c) *in any other case, the date on which intimation of the order sought to be appealed against is received*

.....

(3) The Appellate Assistant Commissioner may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

[s. 30 (2), part]

(1) The Appellate Assistant Commissioner shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Income-tax Officer against whose order the appeal is preferred.

Section 258.
Procedure in appeal.
[s. 31 (1), earlier part]

(2) The following shall have the right to be heard at the hearing of the appeal—

[s. 31 (3) 2nd Prov.]

(a) *the appellant either in person or by an authorised representative;*

[3: 3: (1) (3) The Appellate Assistant Commissioner shall have the power to adjourn the hearing of the appeal from time to time

[s. 31 (2)] (4) The Appellate Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Income tax Officer to make further enquiry and report the result of the same to the Appellate Assistant Commissioner

{ 3: (2A)} (5) The Appellate Assistant Commissioner may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Appellate Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

[New] (6) The order of the Appellate Assistant Commissioner disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision, and the relief, if any, to which the appellant is entitled

(7) On the disposal of the appeal, the Appellate Assistant Commissioner shall communicate the order passed by him to the assessee and to the Commissioner

Sect on 259 (1) In disposing of an appeal, the Appellate Assistant
Powers of the Commissioner shall have the following powers—

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment, or he may set aside the assessment and refer the case back to the Income tax Officer for making a fresh assessment in accordance with the directions given by the Appellate Assistant Commissioner and after making such further enquiry as may be necessary and the Income-tax Officer shall thereupon proceed to make such fresh assessment and determine where necessary, the amount of tax payable on the basis of such fresh assessment.

(b) in an appeal against an order imposing a penalty he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty.

(c) in any other case, he may pass such orders in the appeal as he thinks fit

(c) (g) and (h)]

(3) 31(3) 1st (2) The Appellate Assistant Commissioner shall not enhance an assessment or a penalty unless the appellant has had a reasonable opportunity of showing cause against such enhancement.

Clauses 259-261

Explanation.—In disposing of an appeal, the Appellate Assistant Commissioner may consider and decide any matter determined by the Income-tax Officer in the course of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Appellate Assistant Commissioner by the appellant.

B—Appeals to the High Court.

(1) Subject to the provisions of sub-section (3), any assessee aggrieved by any of the following orders may appeal to the High Court.....against such order—

- (a) an order passed by an Appellate Assistant Commissioner under section.....280.....[28(1) and (2)];
- (b) an order passed by an Appellate Assistant Commissioner under section 259 [31(3) embodied in section dealing with powers of Appellate Assistant Commissioner];
- (c) any order passed by the Appellate Assistant Commissioner rejecting or dismissing an appeal without a decision on the merits;
- (d)an order passed by the Commissioner under section 271(1) [S. 33B(1)].

(2) Subject to the provisions of sub-section (3), the Commissioner may, if he objects to any order passed by an Appellate Assistant Commissioner under section 259 [31 (3) as embodied in section for powers of Appellate Assistant Commissioner], appeal to the High Court against such order.....

(3) Where the amount or value of the subject matter in dispute in appeal to the High Court is rupees seven thousand five hundred or more, an appeal shall lie under this section both on a question of fact and on a question of law; but where the amount or value of the subject matter in dispute in such appeal is below rupees seven thousand five hundred, the appeal shall lie only on a question of law.

(1) The appeal to the High Court shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner, as the case may be.

(2) The High Court may admit an appeal after the expiry of the sixty days referred to in sub-section (1) if it is satisfied that there was sufficient cause for not presenting it within that period.

Section 262 The appeal to the High Court shall be in such form and shall be verified in such manner as may be prescribed by the Supreme Court by rules made under this Chapter

Form of appeal [s 33(3) and s 33B (4), part]
Section 263 Powers and procedure [s 66(5), part]
Subject to such rules as may be made by the Supreme Court in this behalf, the powers to be exercised and the procedure to be followed by the High Court in respect of appeals under this Chapter shall be the same as those applicable in respect of appeals to the High Court against the original decrees of courts subordinate to it

Sect on 261 Hear ng by Bench. [s 66A(1), main para]
(1) The appeal shall be heard by a Bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges

[s 66A(2) Prov] (2) Where there is no such majority, the Judges shall state the point upon which they differ, and the case shall then be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it

Sect on 265. Communica tion of order in appeal [s 66(5), part]
A copy of the judgment of the High Court shall be sent to the Commissioner to the Appellate Assistant Commissioner and to the assessee and the Commissioner shall cause such steps to be taken as may be necessary to give effect thereto

Sect on 266. Costs [s 66(1)]
The costs of the appeal shall be in the discretion of the High Court

Sect on 267 Refund consequent on appeal [New]
(1) Notwithstanding that an appeal has been preferred under this Chapter to the High Court the refund if any due to the assessee shall be made, unless the High Court makes an order authorising the postponement of the payment of the refund until disposal of the appeal

[s 66(7), proviso] (2) If, as a result of the appeal to the High Court, the amount of an assessment is reduced, the amount over paid shall be refunded with such interest as the High Court may fix unless the High Court on intimation given by the Commissioner within thirty days of the receipt of the result of such appeal that he intends to ask for leave to appeal to the Supreme Court, makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal by the Supreme Court or the rejection of the application for leave to appeal, as the case may be

C—Appeals to the Supreme Court.

Section 269 Appealable judgment
An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on an appeal preferred under section 260 [66(1) main para, part embodied in

Clauses 268-271

section for appealable order] in any case which the High [s. 66A(2)] Court certifies to be a fit one for appeal to the Supreme Court.

(1) The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as they may be, apply in the case of appeals under section 268 [S. 66A(2)] in the like manner as they apply in the case of appeals from decrees of a High Court: Section 269. Hearing before the Supreme Court. 5 of 1908 [s. 66A(3), main para] [s. 66A(3), 1st Prov. part]

Provided that nothing in this section shall be deemed to affect the provisions of section 263 or 265 [S. 66(5)] orsection 273 [66(7), main para].

(2) *The costs of the appeal shall be in the discretion of the Supreme Court.* [New]

(3) Where the judgment of the High Court is varied or reversed in the appeal,.....effect shall be given to the order of the Supreme Court in the manner provided in section 265 [S. 66, sub-section (5)] and section 267 [S. 66(7) Prov.] in the case of a judgment of the High Court. [s. 66A(4).]

D—Appeals to the Central Board of Revenue.

(1) *Any employer objecting to an order of the Commissioner refusing to recognise or an order withdrawing recognition from a provident fund may appeal to the Central Board of Revenue in accordance with the provisions of section 301 [58B(4)].* Section 270. Appeals to the Central Board of Revenue. [New]

(2) *Any person in respect of whom a direction disqualifying him for representing an assessee is made under section 324(4) [S. 61(3), main para, latter half] may appeal to the Central Board of Revenue in accordance with the provisions of section 324(4), Proviso [S. 61(3), Prov. (b)].*

E—Revision by the Commissioner.

(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment. Section 271. Revision of orders prejudicial to revenue. [s. 33B(1)]

(2) No order shall be made under sub-section (1)—

(a) to revise an order of re-assessment made under the provisions of section 152 [34(1), (a) (b) power to reopen], or

(b) after the expiry of two years from the date of the order sought to be revised.

Clause 272

Section 272
Revision of other orders
[s 33A(1),
main para
s 33A(2),
main para]

(1) In the case of any order other than an order to which section 271 [33B(1) and (2)] applies passed by an authority subordinate to him, the Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed, and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit

[New]

(2) Where an application for revision was made by the assessee, he shall be given an opportunity of being heard before the application is disposed of

[s 33A(1)
Prov (c)]

(3) The Commissioner shall not of his own motion revise any order under this section if the order has been made more than one year previously

[s 33A(2),
main para
part]

(4) In the case of an application for revision under this section by the assessee, the application must be made within one year from the date on which the order in question was communicated to him or on which he otherwise came to know of it, whichever is earlier

Provided that the Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period

(5) The Commissioner shall not revise any order under this section in the following cases—

[s 33A (1),
Prov (a) Part,
and s 33A(2),
1st Prov (a),
Part]

(a) where an appeal against the order lies to the Appellate Assistant Commissioner but has not been made and the time within which such appeal may be made has not expired,

[s 33A(1)
Prov (a) part,
and s 33A(2),
1st Prov (a)
part]

(b) where an appeal against the order lies to the High Court but has not been made, and neither the time within which such appeal may be made has expired nor the assessee has waived his right of appeal,

[s 33A(1)
Prov (b) part
and s 33A(2)
1st Prov (b)]

(c) where the order is pending on an appeal before the Appellate Assistant Commissioner,

[s 33A(1)
Prov (b) Part
and s 33A(2)
1st Prov (c)]

(d) where the order has been made the subject of an appeal to the High Court, and the appeal is pending or has been disposed of on the merits

[s 33A(3)]

(6) Every application by an assessee for revision under this section shall be accompanied by a fee of twenty five rupees

Clauses 272-277

Explanation 1.—An order by the Commissioner declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to the assessee. [s. 33A(2) and proviso]

Explanation 2.—For the purposes of this section, the Appellate Assistant Commissioner shall be deemed to be an authority subordinate to the Commissioner. [s. 33A(2), Expl.]

F—General

Notwithstanding that an appeal has been preferred under this Chapter to the High Court or to the Supreme Court, tax shall be payable in accordance with the assessment made in the case, unless the High Court or the Supreme Court, as the case may be, grants stay of the collection of the tax pending the disposal of the appeal. Section 273. Tax to be paid notwithstanding appeals. [s. 66(7), main para, and s. 66A(3), 1st proviso, part]

.....The High Court may, on petition made for the execution of the order of the Supreme Court in respect of any costs awarded thereby, transmit the order for execution to any court subordinate to the High Court. Section 274. Execution for costs awarded by Supreme Court. [s. 66A(2), 2nd proviso.]

Where as the result of an appeal to the Appellate Assistant Commissioner, the High Court or the Supreme Court— Section 275. Amendment of assessment on appeal.

(a) any change is made in the assessment of a firm or an association of persons or a new assessment of a firm or an association of persons is ordered to be made, or [s. 31(4) and 33(5), modified]

(b) any alteration in any assessment has to be made,the Income-tax Officer shall, whether or not a direction is given by the appellate authority, make an amendment of the assessment so as to carry out the order of the appellate authority, including, where necessary, an amendment of any assessment made on any partner of the firm or any member of the association.

In computing the period of limitation prescribed for an appeal or an application under this Act,the day on which the order complained of was made, and, if the assessee was not furnished a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order, shall be excluded. Section 276. Exclusion of time taken for copy. [s. 67A]

The Supreme Court may make rules, not inconsistent with the provisions of this Act, on all or any of the following matters, namely— Section 277. Rules by the Supreme Court.

(a) the powers to be exercised and the procedure to be followed in appeals to the High Court under this Chapter ; [New]

(b) any other matter which is to be or may be prescribed by the Supreme Court under this Chapter.

Section 278
Definitions
[s 66(8)]

In this Chapter,—

(a) 'the High Court' means,—

- (i) in relation to any State, the High Court for that State ;
- (ii) in relation to the Union territories of Delhi and Himachal Pradesh, the High Court of Punjab ;
- (iii) in relation to the Union territories of Manipur and Tripura, the High Court of Assam ;
- (iv) in relation to the Union territory of the Andaman and Nicobar islands, the High Court at Calcutta , and
- (v) in relation to the Union territory of the Laccadive, Minicoy and Amundivi islands the High Court of Kerala ;

[New]

(b) 'status' means the category under which the assessee is assessed, with reference to the Finance Act applicable to the case, as "individual", "Hindu undivided family" and so on

CHAPTER XXII

PENALTIES IMPOSABLE BY INCOME-TAX AUTHORITIES

Section 279

Failure to furnish information regarding securities etc

[s 44E(6), latter half]

If any person without reasonable excuse fails to comply with a notice issued under section 97 (7) [s 44E(6) earlier half], the Income-tax Officer may direct that such person shall pay a penalty not exceeding five hundred rupees and a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues

Section 280

Concealment of income or improper distribution of profits etc
[s 28(1) main para]

(1) If the Income-tax Officer or the Appellate Assistant Commissioner, in the course of any proceedings under this Act is satisfied that any person—

- (a) has without reasonable cause failed to furnish the return of his total income which he was required to furnish under section 143 (1) [22(1)] or by notice given under section 143 (2) [sub-section (2) of section 22] or section 154 [34 (1) (a) (b)] or has without reasonable cause failed to furnish it within the time allowed and in the manner required by section 143 (1) [22 (1)] or by such notice, as the case may be, or

Clause 280

- (b) has without reasonable cause failed to comply with a notice under section 146 (1) [sub-section (4) of section 22] or section 147 (2) [sub-section (2) of section 23], or
- (c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

he.....may direct that such person shall pay by way of penalty,—

- (i) in the case referred to in clause (a), in addition to the amount of the tax, if any, payable by him, a sum not exceeding one and a half times that amount, and
- (ii) in the cases referred to in clauses (b) and (c), in addition to any tax payable by him, a sum not exceeding one and a half times the amount of the tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income.

(2) When the person liable to penalty is a registered firm or an unregistered firm which has been assessed under section 190 (b) [23 (5) (b)], then, notwithstanding anything contained in the other provisions of this Act, *the penalty imposable under sub-section (1) shall be a sum not exceeding—* [s.28(1),Prov. (d)]

- (i) *in the case referred to in clause (a) of sub-section (1), one and a half times the amount of the taxpayable by an unregistered firm on an income equal to the firm's total income, and*
- (ii) *in the cases referred to in clauses (b) and (c) of sub-section (1),.....one and a half times the difference between the amount of the tax..... payable by an unregistered firm on an income equal to the firm's total income and the amount of the tax.....payable by an unregistered firm on an income equal to the income of the firm as actually returned by it.*

(3) (a)No penalty for failure to furnish the return of his total income under section 143 (1) [22 (1)] shall be imposed under sub-section (1) on an assessee whose total income does not exceed the maximum amount not chargeable to tax in his case by one thousand five hundred rupees. [s.28(1),Prov. (a)]

(b) Where a person has failed to comply with a notice under section 143 (2) [sub-section (2) of section 22] or section 154 [section 34 (1) (a) (b)] and proves that he has no income liable to tax, the penalty imposable under sub-section (1) shall not exceed twenty-five rupees. [s.28(1),Prov.(b)]

[s. 28(1), Prov. (c)] (c) No penalty shall be imposed under sub-section (1) upon any person assessable under section 169 (1) (i) read with section 170 [42 (1) main para, latter half, part regarding liability of agent to be assessed as representing non-resident] as the agent of a non-resident for failure to furnish the return under section 143 (1) [22 (1)]

[s. 28(2)] (4) If the Income-tax Officer, or the Appellate Assistant Commissioner, in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership on the basis of which the firm has been registered under this Act and that any partner has thereby returned his income below its real amount he may direct that such partner shall, in addition to the tax if any, payable by him, pay by way of penalty a sum not exceeding one and a half times the amount of tax which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income, and no refund or other adjustment shall be claimable by any other partner by reason of such directions

Section 281 Where any person fails to give the notice of discontinuance of his business, profession or vocation required by section 185 (3) [25 (2) earlier half], the Income-tax officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income of the business, profession or vocation up to the date of its discontinuance

Section 282 If the Income-tax Officer, in the course of any proceedings in connection with the regular assessment, is satisfied that any assessee—

False estimate of or failure to pay advance tax. (a) has furnished under section 220 (sub-section (2) or sub-section (3) of section 18A) an estimate of the advance tax payable by him which he knew or had reason to believe to be untrue, or

(b) has without reasonable cause failed to furnish an estimate of the advance tax payable by him in accordance with the provisions of section 220 (3) [sub-section (3) of section 18A],

he may direct that such person shall in addition to the amount of tax, if any, payable by him, pay by way of penalty a sum not exceeding—

[s. 18A(9), Prov.] (i) in the case referred to in clause (a), one and a half times the amount by which the tax actually paid during the financial year immediately

Clauses 282-285

preceding the assessment year, under the provisions of sections 215 to 228 [s. 18A] falls short of—

(1) *eighty per cent. of the tax regularly assessed, as modified under the provisions of section 223 [18A (6)], or*

(2) *where a notice under section 218 [18A (1) (a), main para, part as embodied in section regarding order of Income-tax Officer] was issued to the assessee, the amount payable thereunder, whichever is the less; and*

(ii) *in the case referred to in clause (b), one and a half times the amount on which interest is payable under section 223 [s. 18A(6)].*

(1) *No order imposing a penalty under this Chapter shall be made.....unless the assessee or the partner or the other person on whom the penalty is sought to be imposed, as the case may be, has been heard, or has been given a reasonable opportunity of being heard.* Section 283
Procedure [s. 28(3)]

(2) *The Income-tax Officer shall not impose any penalty under section 280 [s. 28(1) or (2)] or section 282 [18A(9)] without the previous approval of the Inspecting Assistant Commissioner.* [s. 28(6)]

(3) *An Appellate Assistant Commissioner, on making an order under section 280 [28(1) or (2)], shall forthwith send a copy of the same to the Income-tax Officer.* [s. 28(5)]

No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this Chapter. Section 284
Bar against prosecution. [s. 28(4)]

CHAPTER XXIII

OFFENCES AND PROSECUTIONS

If a person fails without reasonable cause or excuse—

- | | |
|---|--|
| <p>(a) <i>to grant inspection or allow copies to be taken in accordance with the provisions of section 139 [39];</i></p> <p>(b) <i>to furnish in due time any of the returns mentioned in section 166(4) [Section 19A], 166(1) [section 20A], 166(2) [section 21] 143(2) [sub-section (2) of section 22] or 138 [section 38];</i></p> <p>(c) <i>to produce, or cause to be produced, on or before the date mentioned in any notice under section 146(1) [Sub-section (4) of section 22] such accounts and documents as are referred to in the notice;</i></p> | <p>Section 285
Failure to make payments or deliver returns or statements or allow inspection. [s. 51, opening lines] [s. 51(c)] [s. 51(c)]</p> <p>[s. 51(d)]</p> |
|---|--|

[s 51(a)] (d) to deduct and pay tax as required by sections 201 to 204 [all sections embodying section 18] or under section 235(2) [Sub section (5) of section 46], or

[s 51(b)] (e) to furnish a certificate required by section 211 [sub section (9) of section 18] or by section 167 [section 20] to be furnished,

[s 51, last part] he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

Section 286
False statement in declaration
[s 52] If a person makes a statement in any verification under this Act which is false, and which he either knows or believes to be false, or does not believe to be true, he shall, on conviction before a Magistrate be punishable with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both

Section 287
Prosecution to be at instance of Inspecting Assistant Commissioner
[s 53] (1) A person shall not be proceeded against for an offence under section 285 [51] or section 286 [52] except at the instance of the Inspecting Assistant Commissioner

(2) The Inspecting Assistant Commissioner may either before or after the institution of proceedings compound any such offence

Section 288
Disclosure of particulars by public servant
[s 54(2) latter part] (1) If a public servant discloses any particulars the disclosure of which is prohibited by section 141(2) [S 54(2), earlier part, as incorporated in Chapter on Income-tax Authorities], he shall, on conviction before a Magistrate, be punishable with imprisonment which may extend to six months, and shall also be liable to fine

[s 54(3)] (2) No prosecution shall be instituted under this section except with the previous sanction of the Commissioner

CHAPTER XXIV

RECOGNISED PROVIDENT FUNDS

Recognition

Section 289
According to & withdrawal of recognition
[s 58B(1)] (1) The Commissioner may accord recognition to any provident fund which in his opinion satisfies the conditions prescribed in section 290 [58C embodied in section for conditions] and the rules made thereunder, and may, at any time, withdraw such recognition if, in his opinion the provident fund contravenes any of those conditions

Clauses 289-290

Provided that the Commissioner may,—

- (a) *subject to such conditions, if any, as he may consider necessary, accord recognition to any provident fund maintained by an enterprise which has been exempted from any or all of the provisions of any scheme framed under the Employees' Provident Funds Act, 1952, notwithstanding that any* 19 of 1952.
of the conditions mentioned in section 290 [58C embodied in section regarding conditions] are not satisfied; and
- (b) *withdraw such recognition if, in his opinion, the provident fund contravenes any of the conditions subject to which recognition was accorded by him.*

(2) An order according recognition shall take effect [s. 58B(2).] on such date as the Commissioner may fix in accordance with any rules the Central Board of Revenue may make in this behalf, such date not being later than the last day of the financial year in which the order is made.

(3) An order withdrawing recognition shall take effect [s. 58B(3).] from the date on which it is made.

(4) An order according recognition to a provident fund shall not, unless the Commissioner otherwise directs, be affected by the fact that the fund is subsequently amalgamated with another provident fund on the occurrence of an amalgamation of the undertakings in connection with which the two funds are maintained, or that it subsequently absorbs the whole or a part of another provident fund belonging to an undertaking which is wholly or in part transferred to or merged in the undertaking of the employer maintaining the first mentioned fund. [s. 58B (3A)]

In order that a provident fund may receive and retain recognition, it shall, subject to the provisions of section 291 [s. 58C(1) Provisos to cls. (a), (b), (d). 58J(4), 58(D), 58(C) (1) (g) latter part], satisfy the conditions set out below and any other conditions which the Central Government may, by rules, prescribe—

- (a) All employees shall be employed in India, or shall be employed by an employer whose principal place of business is in India. [s. 58C(1) opening lines].

- (b) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund. [s. 58C(1) (b), main para.]

Clauses 290-291

[s 58C(1) (c)] (c) The contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year

[s 58C(1) (d) main para] (d) The fund shall consist of contributions as above specified and of donations, if any, received by the trustees, of accumulations thereof, and of interest (simple and compound), credited in respect of such contributions, donations and accumulations, and of securities purchased therewith and of any capital gains arising from the sale, exchange or transfer of capital assets of the fund, and of no other sums

[s 58C(1) (e)] (e) The fund shall be vested in two or more trustees or in the Official Trustee under a trust which shall not be revocable save with the consent of all the beneficiaries

[s 58C(1) (f)] (f) The employer shall not be entitled to recover any sum whatsoever from the fund save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund

In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest (simple and compound) credited in respect of such contributions and accumulations thereof, in accordance with the regulations of the fund.

[s 58C(1) (g) central part] (g) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee, of the employer maintaining the fund

[s 58C(1) (h)] (h) Save as provided in clause (g), or in accordance with such conditions and restrictions as the Central Government may, by rules prescribe, no portion of the balance to the credit of an employee shall be payable to him

Section 291
Relaxation of
conditions
[s 58C(1)
(a) Prov.] (1) Notwithstanding anything contained in section 290(a) [58C(1) (a) main para] the Commissioner may, if he thinks fit, and subject to such conditions, if any, as he thinks proper to attach to the recognition, accord recognition to a fund maintained by an employer whose principal

Clause 291

place of business is not in India, provided the proportion of employees.....employed outside India does not exceed ten per cent.

(2) *Notwithstanding anything contained in section 290(b) [58C(1) (b) main para], an employee who retains his employment while serving in the armed forces of the Union or when taken into or employed in the national service under any law for the time being in force, may, whether he receives from the employer any salary or not, contribute to the fund during his service in the armed forces of the Union or while so taken into or employed in the national service a sum not exceeding the amount he would have contributed had he continued to serve the employer.* [s. 58C(1) (b) Proviso.]

(3) *Notwithstanding anything contained in section 290(d) [58C(1)(d) main para] or section 290(g) [58C(1) (g), earlier part],—* [s. 58C(1) (g), latter part.]

(a) at the request made in writing by the employee who ceases to be an employee of the employer maintaining the fund, the trustees of the fund may consent to retain the whole or any part of the accumulated balance due to the employee to be drawn by him at any time on demand ;

(b) *where the accumulated balance due to an employee who has ceased to be an employee is retained in the fund in accordance with clause (a) of this sub-section, the fund may consist also of the accumulated balance due to the employee.....and of interest (simple and compound) in respect thereof* [s. 58C(1) (d), Proviso.]

(4) Subject to any rules which the Central Government may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of section 290(c) [58C (1) (c)]— [s. 58D.]

(a) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem ; and

(b) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

(5) *Notwithstanding anything contained in section 290 (h) [58C(1)(h)], in order to enable an employee to pay the amount of tax assessed on his total income as determined under section 299(3) [58J(3)], he shall be entitled to withdraw from the balance to his credit in the* [s. 58J(4).]

Clauses 291-296

recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance referred to in section 299(3) [s 58J(3)] had not been included in his total income

Sect on 292
Repugnancy in regulations
[s 58G(2)] Where there is a repugnance between any regulation of a recognised provident fund and any provision of this Chapter or of the rules made thereunder, the regulation shall, to the extent of the repugnance, be of no effect

The Commissioner may, at any time, require that such repugnance shall be removed from the regulations of the fund

Treatment of contributions and balances

Sect on 293
Employer's Contributions—when deducted in assessing his income
Any sum paid by an employer by way of contribution towards a recognised provident fund shall be deducted in computing his income for the purpose of assessment.

[New]
Sect on 294
Employer's annual contributions—when deemed to be income received by employee
[s 58E.] That portion of the annual accretion in any previous year to the balance at the credit of an employee participating in a recognised provident fund as consists of—

- (a) contributions made by the employer in excess of ten per cent of the salary of the employee, and
- (b) interest credited on the balance to the credit of the employee in so far as it exceeds one-third of the salary of the employee or is allowed at a rate exceeding the rate fixed by the Central Government in this behalf by notification in the Official Gazette,

shall be deemed to have been received by the employee in that previous year and shall be included in his total income for that previous year, and shall be liable to income tax and super-tax

Sect on 295
Employee's contributions—Exemption for
[s 58F.] An employee participating in a recognised provident fund shall be entitled to a deduction from the amount of income-tax on his total income with which he is chargeable for any assessment year, of an amount equal to the income-tax calculated at the average rate of income-tax on his own contributions to his individual account in the fund in the previous year, in so far as the aggregate of such contributions does not exceed one-fifth of his salary in that previous year or eight thousand rupees, whichever is less

Sect on 296
Accumulated balance—Exclusion from total income
[s 58G(2) and s 7(1), Expl 2, proviso part] The accumulated balance due and becoming payable to an employee participating in a recognised provident fund shall be excluded from the computation of his total income—

- (i) if he has rendered continuous service with his employer for a period of five years or more, or

Clauses 296-299

- (ii) if, though he has not rendered such continuous service, the Commissioner....., being of the opinion that the service has been terminated by reason of the employee's ill-health, or by the contraction or discontinuance of the employer's business or other cause beyond the control of the employee, allows the employee the benefit of this section.

(1) Where the accumulated balance due to an employee participating in a recognised provident fund is included in his total income owing to the provisions of section 296 [58G (2)] not being applicable, the Income-tax Officer shall calculate the total of the various sums of income-tax and super-tax which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been a recognised provident fund, and the amount by which such total exceeds the total of all sums paid by or on behalf of such employee by way of tax for such years shall be payable by the employee in addition to any other income-tax and super-tax for which he may be liable for the previous year in which the accumulated balance due to him becomes payable.

Section 297.
Tax on accumulated balance.
[s. 58G(3)]

(2) Where the accumulated balance due to an employee participating in a recognised provident fund which is not included in his total income under the provisions of section 296 [58G (2)] becomes payable....., an amount equal to the aggregate of the amounts of super-tax on annual accretions that would have been payable under section 58E of the Indian Income-tax Act, 1922, for any assessment year upto and including the assessment year 1932-1933, if the Indian Income-tax (Second Amendment) Act, 1933, had come into force on the 15th March, 1930, shall be payable by the employee in addition to any other tax payable by him for the previous year in which such balance becomes payable.

[s. 58G(1) latter part].
11 of 1922.
18 of 1933.

The trustees of a recognised provident fund, or any person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, in cases where section 297 (1) [58G(3)] applies, at the time an accumulated balance due to an employee is paid, deduct therefrom the amount payable under section 297 (1) [S. 58G(3)]....., and all the provisions of sections 206 to 211 [18(4) to 18(9)] shall apply as if the accumulated balance were income chargeable under the head "Salaries".

Section 298.
Deduction at source of income-tax payable on accumulated balances.
[s. 58 H]

(1) Where recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day before the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Central Board of Revenue may prescribe.

Section 299.
Treatment of balance in newly recognised provident funds.
[s. 58 J(1)]

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the

[s. 58 J(2)].

Clauses 299-301

recognised provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-section (3) of this section and sub-section (5) of section 291 [s 58J(3) (4)] shall apply thereto

Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the accounts of the recognised fund and shall be liable to income-tax and super-tax in accordance with the provisions of this Act, other than this Chapter

[s 58J(3)]

(3) Subject to such rules as the Central Board of Revenue may make in this behalf, the Income-tax Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Chapter had been in force from the date of the institution of the fund without regard to any tax which may have been paid on any sum, and such aggregate (if any) shall be deemed to be income received by the employee in the previous year in which the recognition of the fund takes effect and shall be included in the employee's total income for that previous year, and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance.

Provided that, in cases of serious accounting difficulty, the Commissioner shall have power, subject to the said rules, to make a summary calculation of such aggregate

[s 58J(5)]

(4) Nothing in this section shall affect the rights of the persons administering an unrecognised provident fund or dealing with it, or with the balance to the credit of any individual employee, before recognition is accorded, in any manner which may be lawful

Other provisions

Section 300

Accounts
recognised
provident
funds

[s 58—[1]

(1) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars as the Central Board of Revenue may prescribe

(2) The accounts shall be open to inspection at all reasonable times by Income tax authorities and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Central Board of Revenue may prescribe

Section 301

Appeals

[s 58B(4)]

An employer objecting to an order of the Commissioner refusing to recognise or an order withdrawing recognition from a provident fund may appeal within sixty days of such order, to the Central Board of Revenue

Clauses 301-303

The appeal shall be in the form and shall be verified in the manner prescribed by the Central Board of Revenue.

(1) Where an employer who maintains a provident fund (whether recognised or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to trustees in trust for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

Section 302.
Treatment of
fund transferred
by employer to
trustee.
[s. 58-K]

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall, if the employer has made effective arrangements to secure that tax shall be deducted at source from the amount of such share when paid to the employee, be deemed to be an expenditure by the employer within the meaning of section 37 [clause (xv) of sub-section (2) of section 10], incurred in the *previous* year in which the accumulated balance due to the employee is paid.

(1) All rules made under this Chapter shall be subject to the provisions of section 329 (4) [sub-section (5) of section 59].

Section 303.
Provisions
relating to
rules.
[s. 58 L.]

(2) In addition to any power conferred by this Chapter, the Central Government may make rules—

- (a) prescribing the statements and other information to be submitted with an application for recognition ;
- (b) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company ;
- (c) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund ;
- (d) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn ; and
- (e) generally, to carry out the purposes of this Chapter and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as it may deem requisite.

Clauses 304-305

Section 304
Applicat on
of this chap-
ter
[s 58M]
19 of 1925

Section 305
Definitions
[s 58A)

This Chapter shall not apply to any provident fund to which the Provident Funds Act, 1925, applies

In this Chapter, unless the context otherwise requires,—

- (a) a 'recognised provident fund' means a provident fund which has been and continues to be recognised by the Commissioner, in accordance with the provisions of this Chapter,
- (b) an "employer" means any person who maintains a provident fund for the benefit of his or its employees, being—
 - (i) a Hindu undivided family, company, firm or other association of persons, or
 - (ii) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under the head '*Profits and gains of business, profession or location*',
- (c) an "employee" means an employee participating in a provident fund, but does not include a personal or domestic servant,
- (d) a "contribution" means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include any sum credited as interest,
- (e) the "balance to the credit" of an employee means the total amount to the credit of his individual account in a provident fund at any time,
- (f) the "annual accretion" to the balance to the credit of an employee means the increase to such balance in any year, arising from contributions and interest,
- (g) the "accumulated balance due" to an employee means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund on the day he ceases to be an employee of the employer maintaining the fund, and
- (h) the "regulations of a fund" means the special body of regulations governing the constitution and administration of a particular provident fund

Clauses 306-307

CHAPTER XXV

APPROVED SUPERANNUATION FUNDS

Approval

(1) The Central Board of Revenue may accord approval to any superannuation fund or any part of a superannuation fund which in its opinion complies with the requirements of section 307 [58P], and may at any time withdraw such approval, if in its opinion, the circumstances of the fund or part cease to warrant the continuance of the approval. Section 306.
Approval and
withdrawal
of approval.
[s. 58-O]

(2) The Central Board of Revenue shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions.

(3) The Central Board of Revenue shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(4) The Central Board of Revenue shall neither refuse nor withdraw approval to any superannuation fund or any part of a superannuation fund unless it has given the trustees of that fund a reasonable opportunity of being heard in the matter.

(1) In order that a superannuation fund may receive and retain approval, *it shall satisfy the conditions set out below and any other conditions which the Central Government may, by rules, prescribe—* Section 307.
Conditions
for approval.
[s. 58-P
main para]

(a) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in India ;

(b) the fund shall have for its sole purpose the provision of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement, or for the widows, children or dependants of persons who are or have been such employees on the death of those persons; and

(c) the employer in the trade or undertaking shall be a contributor to the fund.

(2).....The Central Board of Revenue may, if it thinks fit and subject to such conditions, if any, as it thinks proper to attach to the approval, approve a fund or any part of a fund— [s. 58 P,
Proviso]

(i) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund, or

(ii) if the main purpose of the fund is the provision of such annuities as aforesaid, notwithstanding that such provision is not its sole purpose, or

Clauses 307-310

(iii) notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in India

[New]

(3) Where there is a repugnance between any rules of an approved superannuation fund or the terms of the instrument under which the fund is established and any provision of this Chapter or of the rules made thereunder, the rules of the fund or the terms of the instrument under which the fund is established, as the case may be, shall, to the extent of the repugnance, be of no effect, and the Central Board of Revenue may at any time require that such repugnance shall be removed from the rules of the fund or the terms of the instrument, as the case may be

Sect on 308
Application
for approval

[s 58 Q]

(1) An application for approval of a superannuation fund or part of a superannuation fund for any assessment year shall be made in writing before the end of that year by the trustees of the fund to the Income-tax Officer by whom the employer is assessable, and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last previous year for which such accounts have been made up. The Central Board of Revenue may require such further information to be supplied as it thinks proper

(2) If any alteration in the rules constitution objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Income-tax Officer mentioned in sub-section (1), and in default of such communication any approval given shall, unless the Central Board of Revenue otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect

Treatment of investments and contributions

Section 309
Income from
investments
[s 58R main
para, part]

Income derived from investments or deposits in an approved superannuation fund, and any capital gains arising from the sale, exchange or transfer of capital assets of such fund shall not be included in the total income of the person in receipt thereof.

Section 310
Employer's
contribution
but on—
Deduction
for
[s 58R, main
para part]
[s 58R 2nd
Prov]

Any sum paid by an employer by way of contribution towards an approved superannuation fund shall be deducted in computing his income for the purpose of assessment

Provided that where the contribution is not an ordinary annual contribution it shall be treated as the Central Board of Revenue may direct, either as a deduction for the year in which the sum is paid, or as a deduction to be spread over such period of years as the Central Board of Revenue thinks proper

Clauses 311-315

Where the assessee is an employee participating in an approved superannuation fund, any sum paid in the previous year by him by way of contribution towards the superannuation fund shall, in so far as such sum is an ordinary annual contribution, be treated for all the purposes of this Act as if it were a sum to which the provisions of section 88 [15] apply.

Section 311.
Employee's contribution—when exempt.

[s. 58R, main para, part and 1st proviso]

Where any amount standing to the credit of an employee in an approved superannuation fund is paid to the employee during his lifetime but not at or in connection with the termination of his employment, the amount so paid shall be deemed for the purposes of income-tax (but not for the purposes of super-tax) to be income of the employee of the previous year in which it is so paid to him.

Section 312.
Contribution paid to employee—when deemed to be income.

[s. 58S (1)]

Where any amount standing to the credit of an employee in an approved superannuation fund is paid to the employee during his lifetime but not at or in connection with the termination of his employment,.....income-tax (but not super-tax) on the amount so.....paid shall, except in the case of an employee whose employment was carried on abroad, be deducted by the trustees of the fund at the average rate of income-tax at which the employee was liable to income-tax during the preceding three years or during such period, if less than three years, as he was a member of the fund, and shall be paid by the trustees to the credit of the Central Government within the prescribed time and in such manner as the Central Board of Revenue may direct.

Section 313.
Deduction of tax on contributions paid to an employee.

[s. 58S (2)]

Other provisions.

Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under section 166(2) [21].

Section 314.
Deduction from pay of and contributions on behalf of employee to be included in return.

[s. 58T]

If a fund or a part of a fund for any reason ceases to be an approved superannuation fund, the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid—

Section 315.
Liabilities of trustees on cessation of approval of funds.

[s. 58U]

(a) on account of returned contributions (including interest on contributions, if any), and

(b) in commutation or in lieu of annuities,

in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved superannuation fund under the provisions of this Chapter.

Clauses 316-317

Section 316.
Particulars to
be furnished
in respect of
superannua-
tion funds
[s 58V]

The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Income-tax Officer, within such period, not being less than twenty-one days from the date of the notice, as may be specified in the notice, furnish such return, statement, particulars or information, as the Income-tax Officer may require

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Section 317
Provisions re-
lating to
rules
[New]

(1) All rules made under this Chapter shall be subject to the provisions of section 329(4) [sub-section (5) of section 59]

(2) In addition to any power conferred by this Chapter, the Central Government may make rules—

- (a) prescribing the statements and other information to be submitted with an application for approval,
- (b) prescribing the returns statements, particulars, or information which the Income tax Officer may require from the trustees of an approved superannuation fund or from the employer,
- (c) limiting the ordinary annual contribution and any other contributions to an approved superannuation fund by an employer,
- (d) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of or creation of a charge upon, his beneficial interest in an approved superannuation fund,
- (e) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of any payment made from a superannuation fund from which approval has been withdrawn,
- (f) providing for the withdrawal of approval in the case of a fund which ceases to satisfy the requirements of this Chapter or of the rules made thereunder, and
- (g) generally, to carry out the purposes of this Chapter and to secure such further control over the approval of superannuation funds and the administration of approved superannuation funds as it may deem requisite

Clauses 318-320

In this Chapter, unless the context otherwise requires,— Section 318
Definitions.

- (a) "approved superannuation fund" means a super- [s. 58N]
annuation fund or any part of a superannua-
tion fund which has been and continues to
be approved by the Central Board of Revenue in
accordance with the provisions of this Chapter;
- (b) "employer", "employee" and "contribution" have, in
relation to superannuation funds, the meanings
assigned to those expressions in section 305 [58A]
in relation to provident funds;
- (c) "ordinary annual contribution" means an annual
contribution of a fixed amount or an annual con-
tribution computed on some definite basis by refe-
rence to the income chargeable under the head
"Salaries", the contributions or the number of mem-
bers of the fund.

CHAPTER XXVI

MISCELLANEOUS

A.—Miscellaneous provisions.

Income which has once been charged to income-tax or super-tax in the hands of any person for any assessment year shall not be charged again to income-tax or super-tax, as the case may be, in the hands of the same person, either for the same assessment year or for a different assessment year. Section 319.
Bar of double
taxation un-
der the Act.
[New]

(1) A notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908. Section 320.
Service of
notice—Ge-
neral. [s. 63]
5 of 1908.

(2) Any such notice or requisition may be addressed—

- (a) in the case of a firm or a Hindu undivided family,
.....to any member of the firm or to the mana-
ger or any adult male member of the family;
- (b) in the case of a local authority, company, or other
association of persons....., to the principal
officer thereof;
- (c) in the case of any other person (not being an indi-
vidual), to the person who manages or controls
his affairs.

Clauses 321-323

Section 321
Service of
notice where
family is
disrupted or
firm, etc., is
dissolved
[New]

(1) After a finding of total partition has been recorded by the Income-tax Officer under section 181 [25A] in respect of any Hindu family, notices under this Act in respect of the income of the Hindu family shall—

- (a) in the case of a notice under section 154 [sub-section (1) of section 34], be served on all persons who were members of the Hindu family immediately before the partition and the legal representative of any such member who is deceased, and
- (b) in other cases, be served on the person who was the last manager of the Hindu family, or, if such person is dead, then on all adults who were members of the Hindu family immediately before the partition

(2) Where a firm or other association of persons is dissolved, notices under this Act in respect of the income of the firm may be served on any person who was a partner (not being a minor) or member of the firm or association, as the case may be, immediately before its dissolution

Section 322
Service of
notice in the
case of dis-
continued
business
[s 23 (6)]

Where an assessment is to be made under section 185 [25(1)], or section 91(1) [section 25(3), latter half or section 25(4) main para, latter half], the Income-tax Officer may serve on the person whose income is to be assessed, or in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under section 143 (2) [s 22 (2)], and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under section 143 (2) [s 22 (2)]

Section 323
Marking of
exhibits
[New]

(1) There shall be endorsed on every document which has been placed on the record by any Income-tax authority the following particulars, namely—

- (a) the number of the case,
- (b) the name of the person producing the document,
- (c) the date on which it was produced, and
- (d) a statement of its having been so placed on the record,

and the endorsement shall be signed or initialled by the Income-tax authority

(2) Where any Income-tax authority bases any order or any part of the order on any document, the Income tax authority shall expressly make a reference in its order to such document, giving particulars sufficient to identify the document.

Clause 324

(1) Any assessee who is entitled or required to attend before.....any Income-tax authority in connection with any proceeding under this Act otherwise than when required under section 136 [37] to attend personally for examination on oath or affirmation, may, subject to the other provisions of this section, attend by an authorised representative. Section 324.
Appearance
by authorised
representative.
[s. 61 (1)
part.]

(2) For the purposes of this section, "authorised representative" means a person authorised by the assessee in writing to appear on his behalf, being— [s. 61 (1)
part]

- (i) a relative of or a person regularly employed by the assessee ; or..... [s. 61 (1)
part]
- (ii)any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings ; or [s. 61 (2)(i)]
- (iii) any legal practitioner who is entitled to practise in any civil court in India ; or [s. 61 (2)(ii)]
- (iv) an accountant ; or [s. 61 (1)
part]
- (v) any other person who, immediately before the commencement of this Act, was a lawyer, an accountant or an Income-tax practitioner within the meaning of sub-section (2) of section 61 of the Indian Income-tax Act, 1922, and was actually practising as such. [s. 61 (1)
part, and
61 (2) (iv)]
11 of 1922

Explanation.—In this section, "accountant" means a chartered accountant within the meaning of the Chartered Accountants Act, 1949, and includes, in relation to any State, any person who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956, is entitled to be appointed to act as an auditor of companies registered in that State. [s. 61 (2)
(iii)]
38 of 1949
1 of 1956

(3) No person who has been dismissed from Government service after the 1st day of April, 1938, shall be qualified to represent an assessee under sub-section (1); and if any legal practitioner or.....accountant is found guilty of misconduct in connection with any income-tax proceedings by the authority empowered to take disciplinary action against members of the profession to which he belongs,he shall be thenceforward disqualified to represent an assessee.....under sub-section (1). [s. 61 (3),
main para,
part]

(4)If any person, other than a legal practitioner or accountant, is found guilty of.....misconduct in connection with any income-tax proceedings by the prescribed authority, the prescribed authority may direct that he shall be thenceforward disqualified to represent an assessee under sub-section (1) : [s. 61 (3)
main para
part]

[s. 61
Prov.] (3).

Provided that—

- (a) no such direction shall be made in respect of any person unless he is given a reasonable opportunity of being heard,
- (b) any person against whom such direction is made may, within one month of the making of the direction, appeal to the Central Board of Revenue to have the direction cancelled, and
- (c) no such direction shall take effect until one month from the making thereof, or, when an appeal is preferred, until the disposal of the appeal

[New]

11 of 1922

(5) A person disqualified to represent an assessee by virtue of the provisions of sub-section (3) of section 61 of the Indian Income tax Act, 1922 shall be disqualified to represent an assessee under sub-section (1)

Section 325
Receipt to
be given
[s. 62]

A receipt shall be given for any money paid or recovered under this Act.

Section 326
Indemnity
[s. 65]

Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention, or payment thereof

Section 327
Bar of suits in
civil court
[s. 67]

No suit shall be brought in any civil court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act.

Section 328
Act to have
effect pending
legislative
provision for
charge of tax.
[s. 67 B]

If on the 1st day of April in any assessment year provision has not yet been made by a Central Act for the charging of income-tax or super tax for that assessment year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding assessment year or the provision proposed in the Bill then before Parliament whichever is more favourable to the assessee, were actually in force

B—Rules

Section 329
Power to
make rules
[s. 59]

(1) The Central Board of Revenue may, subject to the control of the Central Government by notification in the Gazette of India make rules for carrying out the purposes of this Act and for the ascertainment and determination of any class of income. Such rules may be made for the whole of India or for such part thereof as may be specified

Clause 329

(2) Without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the manner in which, and the procedure by which, the income.....shall be arrived at in the case of—
 - (i) income derived in part from agriculture and in part from business ;
 - (ii) persons residing out of *India*;
- (b) provide for the determination of the value of any perquisite chargeable to tax under this Act in such manner and on such basis as appears to the Central Board of Revenue to be proper and reasonable;
- (c) prescribe the procedure to be followed on applications for refunds;
- (d) prescribe the procedure for giving effect to the terms of any agreement for the granting of relief in respect of double taxation or for the avoidance of double taxation which may be entered into by the Central Government under this Act;
- (e) *provide for the maintenance of a register of persons other than legal practitioners or accountants as defined in section 324(2), Explanation [61], practising before Income-tax authorities and for the constitution of, and procedure to be followed by, the authority referred to in sub-section (4) of section 324 [61];*
- (f) *provide for the issue of certificates verifying the payment of tax by assesseees ;*
- (g) provide for any matter which by this Act is to be or may be prescribed.

(3) In cases coming under clause (a) of sub-section (2), where the income.....liable to tax cannot be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which in the opinion of the Central Board of Revenue is unreasonable, the rules made under that sub-section may—

- (a) prescribe methods by which an estimate of such income.....may be made, and
- (b) in cases coming under sub-clause (i) of clause (a) of sub-section (2), prescribe the proportion of the income which shall be deemed to be income.....liable to tax ;

and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act.

(4) All rules made under this section shall be laid before each House of Parliament as soon as may be after they are made, and shall be subject to such modifications as Parliament may make in the session in which they are so laid or the session immediately following

C—Transitional provisions and repeal¹

THE FIRST SCHEDULE

INSURANCE BUSINESS

(See section 44)

A—Life insurance business

Rule 1 Profits of life insurance business to be computed separately [Schedule Rule 1] In the case of a person who carries on or at any time in the previous year carried on life insurance business, the profits and gains of such person from that business shall be computed separately from his profits and gains from any other business

Rule 2 Computation of profits of life insurance business [Schedule Rule 2] (1) The profits and gains of life insurance business shall be taken to be the greater of the following—

- (a) the gross external incomings of the previous year from that business less the management expenses of that year
- (b) the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made in accordance with the Insurance Act 1938 in respect of the last inter valuation period ending before the commencement of the assessment year, so as to exclude from it any surplus or deficit included therein which was made in any earlier inter valuation period and any expenditure which is not deductible under the provisions of sections 30 to 40 [Sections regarding deductions for business] in computing income chargeable under the head "Profits and gains of business, profession or vocation"

4 of 1938

(2) The amount to be allowed as management expenses under sub rule (1) shall not exceed the aggregate of the following—

- (a) 7½ per cent of the premiums received during the previous year in respect of single premium life insurance policies

¹ Not drafted. See notes for a discussion of the important points

- (b) in respect of the first year's premiums received in respect of other life insurance policies for which the number of annual premiums payable is less than twelve, or for which the number of years during which premiums are payable is less than twelve, for each such premium or each such year $7\frac{1}{2}$ per cent. of such first year's premiums received during the *previous* year;.....
- (c) 90 per cent. of the first year's premiums received during the *previous* year in respect of all other life insurance policies;.....
- (d) in respect of all renewal premiums received during the *previous* year, an amount calculated at such percentage thereof as is permissible under subsection (2) of section 40B of the Insurance Act, 1938, as reduced by any expenditure which is ^{4 of 1938} not deductible under sections 30 to 40 [sections regarding business deductions] in computing income chargeable under the head "*Profits and gains of business, profession or vocation*".

In computing the surplus for the purpose of rule 2, ^{Rule 3.}
[Schedule, rule 2]— ^{Deductions}
 ^{[Schedule,}
 ^{Rule 3]}

- (a) four-fifths of the amounts paid to or reserved for or expended on behalf of policy-holders shall be allowed as a deduction:

*** *** *** ***

Provided.....that if any amount so reserved for policy-holders ceases to be so reserved, and is not paid to or expended on behalf of policy-holders, that proportion of such amount (one-half or four-fifths, as the case may be) if it has been previously allowed as a deduction under this Act or under the *Indian Income-tax Act, 1922*, shall be ^{11 of 1922} treated as part of the surplus for the period in which the said amount ceased to be so reserved:

- (b) any amount either written off or reserved in the accounts or through the actuarial valuation balance sheet to meet depreciation of or loss on the realisation of *investments* shall be allowed as a deduction, and any sums taken credit for in the accounts or actuarial valuation balance sheet on account of appreciation of or gains on the realisation of *investments* shall be included in the surplus :

Provided that if upon investigation it appears to the Income-tax Officer after consultation with the Controller of Insurance that having due regard to the necessity for making reasonable provision for bonuses to participating policy-holders and for contingencies, the rate of interest or other factor employed in determining the liability in respect of outstanding policies is materially inconsistent with the valuation of *investments* so as artificially to reduce the

surplus, such adjustment shall be made to the allowance for depreciation or to the amount to be included in the surplus in respect of appreciation of such investments as shall increase the surplus for the purposes of these provisions to a figure which is fair and just,

(c) (i) interest received during the inter-valuation period in respect of any securities of the Central Government which have been issued or declared to be income-tax free, shall not be excluded, but

(ii) no income-tax shall be payable on the annual average of the amount of such interest

Rule 4. Adjustment of tax paid by deduction at source [Sch, Rule 4] Where for any year an assessment of the profits of life insurance business is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, then, in computing the income-tax payable for that year, credit shall not be given in accordance with section 207 [Section 18 (5), main para, part regarding credit for tax deducted at source] for the income-tax paid in the previous year, but credit shall be given for the annual average of the income-tax paid by deduction at source from interest on securities or otherwise during such period

B—Other insurance business

Rule 5. Computat on of profits of other insurance business [Sch Rule 6 earlier half part] 4 of 1938 [New] The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938, to be furnished to the Controller of Insurance, subject to the following adjustments—

11 of 1922 2 of 1886 (a) any sum written off in the accounts as representing depreciation of any building, machinery, plant or furniture used for the purposes of the business shall be allowed as a deduction, whether such sum is or is not admissible under the provisions of section 32(1) clauses (i) and (ii) [10(2) (vi)], subject to the condition that the aggregate of all such deductions allowed under this Act or under the Indian Income-tax Act, 1922, or under any Act repealed by that Act or under executive orders issued when the Indian Income-tax Act, 1886, was in force, shall, in no case, exceed the original cost to the assessee of the building, machinery, plant or furniture, as the case may be,

[Sch Rule 6, earlier half part] (b) subject to the other provisions of this rule, any deduction which is not admissible under the provisions of sections 30 to 40 [Sections regarding business deductions] in computing the profits and gains of a business shall be added back,

- (c) *any amount either written off or reserved in the accounts to meet depreciation of or loss on the realisation of investments shall be allowed as a deduction, and any sums taken credit for in the accounts on account of appreciation of or gains on the realisation of investments shall be treated as part of the profits and gains.* [Sch., Rule 6, latter half, read with Rule 3(b)]

C—Other provisions.

(1) The profits and gains of the branches in *India* of a person not resident in *India* and carrying on any business of insurance, may, in the absence of more reliable data, be deemed to be that proportion of the world income of such person which corresponds to the proportion which his premium income derived from *India* bears to his total premium income. [Rule 6. Profits and gains of non-resident person. [Sch., Rule 8, para 1]

(2) For the purposes of this rule, the world income in relation to life insurance business of a person not resident in *India* shall be computed in the manner laid down in this Act for the computation of the profits and gains of life insurance business carried on in *India*. [Sch., Rule 8, para 2]

(1) For the purposes of rules 1 to 6 [other rules regarding insurance business] *and of this rule*,— [Rule 7. Interpretation]

- (i) “gross external incomings” means the full amount of incomings from interest, dividends, fines and fees and all other incomings from whatever source derived (except premiums received from policy-holders and interest and dividends on any annuity fund), and includes also profits from reversions and on the sale or the granting of annuities, but excludes profits on the realisation of investments: [Sch., Rule 5(ii).]

Provided that incomings, including the annual value of the property occupied by the assessee, which but for the provisions of section 44 [10(7)] would have been assessable under the head “Income from house property”, shall be computed in the manner applicable to income chargeable under that head, and that there shall be allowed from such gross incomings such deductions as are permissible in respect of income chargeable under that head;

- (ii) “investments” includes securities, stocks and shares; [Sch., Rule 5(v) mod.ficd]
- (iii) “management expenses” means the full amount of expenses (including commissions) incurred exclusively in the management of the business of life insurance, and in the case of a company carrying on other classes of business as well as the business of life insurance, in addition thereto a fair proportion of the expenses incurred in the general management of the whole business. [Sch., Rule 5(iii)]

Bonuses or other sums paid to or reserved on behalf of policy-holders, depreciation of, and losses on the realisation of investments, and any expenditure other than expenditure which may under the provisions of sections 30 to 40 [Sections regarding business deductions] be allowed for in computing the profits and gains of a business, are not management expenses for the purposes of rules 1 to 6 [all other rules regarding insurance business] and of this rule,

- [Sch. Rule 5(iv)] (iv) "life insurance business" means life insurance business as defined in clause (11) of section 2 of the Insurance Act, 1938,
- 4 of 1938
- [New] (v) "rule" means a rule contained in this Schedule
- [New] (2) References in rules 1 to 6 [other rules regarding insurance business] and in this rule to the Insurance Act, 1938, or any provision thereof, shall, in relation to the Life Insurance Corporation of India, be construed as references to that Act or provision as read with section 43 of the Life Insurance Corporation Act, 1956
- 4 of 1938
- 31 of 1956

THE SECOND SCHEDULE¹

PROCEDURE FOR RECOVERY OF TAX

[See section 231 (1)]

PART I

General provisions

Rule 1 Definitions In this Schedule, unless the context otherwise requires,—

- (a) "certificate" means a certificate received by the Collector from the Income-tax Officer for the recovery of arrears under this Schedule,
- (b) "defaulter" means the assessee mentioned in the certificate,
- (c) "execution", in relation to a certificate, means recovery of arrears in pursuance of the certificate,
- (d) "movable property" includes growing crops;²
- (e) "officer" means an officer authorised to make an attachment or sale under this Schedule, and
- (f) "rule" means a rule contained in this Schedule

¹ The provisions contained in this Schedule though new, have not been underlined for facility of reading

² This Act will hereafter be referred to as the "Bengal Act"

³ Cf S 2(13), C. P. C.

[3 Bengal Public Demands Recovery Act, 1913 (Bengal Act 3 of 1913)]³

When a certificate has been received by the Collector from the Income-tax Officer for the recovery of arrears under this Schedule, the Collector shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under this Schedule.

Rule 2. Issue of Notice.
[S. 7, Bengal Act]

No step in execution of a certificate shall be taken until the period of fifteen days has elapsed since the date of the service of the notice required by the preceding rule :

Rule 3. When certificate may be executed.

[S. 13, Bengal Act]

Provided that, if the Collector is satisfied that the defaulter is likely to conceal, remove or dispose of the whole or any part of such of his movable property as would be liable to attachment in execution of a decree of a civil court, and that the realisation of the amount of the certificate would in consequence be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing, an attachment of the whole or any part of such property :

Provided further that if the defaulter whose property has been so attached furnishes security to the satisfaction of the Collector, such attachment shall be cancelled from the date on which such security is accepted by the Collector.

If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Collector may grant in his discretion, the Collector shall proceed to realise the amount by one or more of the following modes :—

Rule 4. Mode of recovery.

[S. 5 of the Madras Revenue Recovery Act, 1864 (2 of 1864)]¹.

(a) by attachment and sale of the movable property of the defaulter ;

[S. 14 Bengal Act]

(b) by attachment and sale of the immovable property of the defaulter ;

[S. 150, The Bombay Revenue Code, 1879 (5 of 1879)]²

(c) by appointing a receiver of the property belonging to the defaulter ;

(d) by arrest and detention of the defaulter in civil prison.

There shall be recoverable, in the proceedings in execution of every certificate,—

Rule 5. Interest, costs and charges recoverable.

(a) such interest upon the tax to which the certificate relates as is payable under this Act, and

[S. 16, Bengal Act]

¹ This Act will hereafter be referred to as the "Mad-as Act".

² This Act will hereafter be referred to as the "Bombay Act".

(b) all charges incurred in respect of—

(i) the service of notice upon the defaulter to pay the arrears, and of warrants and other processes, and

(ii) all other proceedings taken for realising the arrears

Rule 6
Purchaser's
title
[S 20 (1),
Bengal Act] (1) Where property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest of the defaulter at the time of the sale, even though the property itself be specified

[S 20 (2),
Bengal Act] (2) Where immovable property is sold in execution of a certificate, and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold and not from the time when the sale becomes absolute

Rule 7
Sut
aga
nst
Pur
chaser
not
maintainable
on ground of
purchase
being made
on behalf of
plaintiff
[S 21, Bengal
Act] (1) No suit shall be maintained against any person claiming title under a purchase certified by the Collector in the manner laid down in this Schedule, on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner

Rule 8
Disposal of
proceeds of
execution
[S 26
Bengal Act] (1) Whenever assets are realised, by sale or otherwise in execution of a certificate, they shall be disposed of in the following manner —

(a) there shall first be paid to the Income-tax Officer the costs incurred by him,

(b) there shall, in the next place, be paid to the Income-tax Officer the amount due under the certificate in execution of which the assets were realized,

(c) if there remains a balance after these sums have been paid there shall be paid to the Income-tax Officer therefrom any other amount recoverable under the procedure provided by this Act which may be due upon the date upon which the assets were realized, and

(d) the balance (if any) remaining after the payment of the amount (if any) referred to in clause (c) shall be paid to the defaulter

(2) If the defaulter disputes any claim made by the Income-tax Officer to receive any amount referred to in clause (c), the Collector shall determine the dispute.

Except as otherwise expressly provided in this Act, every question arising between the Income-tax Officer and the defaulter, or their representatives, relating to the execution, discharge or satisfaction of a certificate duly filed under this Act, or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Collector before whom such question arises :

Rule 9.
General bar to jurisdiction of Civil Courts, save where fraud alleged. [S. 37, Bengal Act]

Provided that a suit may be brought in a civil court in respect of any such question upon the ground of fraud.

(1) All such property as is by the Code of Civil Procedure, 1908, exempted from attachment and sale in execution of a decree of a civil court shall be exempt from attachment and sale under this Schedule.

Rule 10. Property exempt from attachment. 5 of 1908 [S. 17, Bengal Act] [S. 156, Bombay Act] [S. 156, Bombay Act]

(2) The Collector's decision as to what property is so entitled to exemption shall be conclusive.

(1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Collector shall proceed to investigate the claim or objection :

Rule 11. Investigation by Collector. [Rule 39, Sch. II, Bengal Act]

Provided that no such investigation shall be made where the Collector considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Collector ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Collector shall deem fit.

(3) The claimant or objector must adduce evidence to show that—

[Rule 40, Sch. II, Bengal Act]

(a) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or

(b) (in the case of movable property) at the date of the attachment.

he had some interest in, or was possessed of, the property in question.

(4) Where, upon the said investigation, the Collector is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him

[Rule 41, Sch. II, Bengal Act]

or in the occupancy of a tenant or other person paying rent to him, or that being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Collector shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale

[Rule 42,
Sch II,
Bengal Act]

(5) Where the Collector is satisfied that the property was, at the said date in the possession of the defaulter as his own property and not on account of any other person or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Collector shall disallow the claim

[Rule 43
Sch II,
Bengal Act]

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute, but subject to the result of such suit (if any), the order of the Collector shall be conclusive

Rule 12
Removal of
attachment
on satisfaction
or
cancellation
of certificate

Where—

(a) the amount due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to hold a sale, are paid to the Collector, or

[Rule 24 Sch
II Bengal
Act]

(b) the certificate is cancelled,

the attachment shall be deemed to be withdrawn and, in the case of immovable property, the withdrawal shall, if the defaulter so desires be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner provided by this Schedule for a proclamation of sale of immovable property

Rule 13
Officer entitled to attach and sell
[S 154,
latter part,
Bombay
Act]

The attachment and sale of movable property and the attachment and sale of immovable property may be made by such officers or class of officers as the Collector may from time to time direct

Rule 14
Defaulting purchaser answerable for loss on resale

Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale shall be certified to the Collector by the officer holding the sale and shall at the instance of either the Income-tax Officer or the defaulter be recoverable from the defaulting purchaser under the procedure provided by this Schedule

[Rule 51,
Sch II
Bengal Act]

Provided that no such application shall be entertained unless filed within fifteen days from the date of re-sale

(1) The Collector may, in his discretion, adjourn any sale hereunder to a specified day and hour; and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment :

Rule 15.
Adjournment
or stoppage
of sale.

[Rule 50,
Sch. II,
Bengal Act]

Provided that, where the sale is made in, or within the precincts of, the office of the Collector, no such adjournment shall be made without the leave of the Collector.

(2) Where a sale of immovable property is adjourned under sub-rule (1) for a longer period than one calendar month, a fresh proclamation of sale under this Schedule shall be made unless the defaulter consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the arrears and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such arrears and costs has been paid to the Collector who ordered the sale.

Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Rule 16.
Private
alienation of
property after
attachment
to be void.

[S. 64 C.P.C.]
[S. 18, Bengal
Act]

No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Rule 17.
Prohibition
against
bidding or
purchase by
officer.

[Rule 52,
Sch. II
Bengal Act.]

No sale under this Schedule shall take place on Sunday or other general holiday recognised by the State Government or on any day which has been notified by the State Government to be a local holiday for the area in which the sale is to take place.

Rule 18.
Prohibition
against sale
on holidays.

[S. 167.
Bombay Act]

Any officer authorised to attach or sell any property or to arrest the defaulter or charged with any duty to be performed under this Schedule, may apply to the officer-in-charge of the nearest police station for such assistance as may be necessary for preventing obstruction to such officer in the discharge of his duties, and the authority to whom such application is made shall depute a sufficient number of police officers for furnishing such assistance.

Rule 19.
Assistance
by police.

PART II

Attachment and sale of movable property

Rule 20
Warrant

[S 8 (First)
earlier part,
Madras
Act]

Except as otherwise provided in this Schedule, when any movable property is to be attached the officer shall be furnished by the Collector (or other officer empowered by him in that behalf) a warrant in writing and signed with his name specifying the name of the defaulter and the amount to be realised

Rule 21 Ser-
vice of copy
of warrant

[S 8 (First)
later part
Madras Act]

The officer shall cause a copy of the warrant to be served on the defaulter

Rule 22
Attachment

If, after service of the copy of the warrant the amount is not paid forthwith, the officer shall proceed to attach the movable property of the defaulter.

Rule 23
Property in
defaulter's
possession

[Rule 15
Sch II,
Bengal Act]

Where the property to be attached is movable property (other than agricultural produce) in the possession of the defaulter, the attachment shall be made by actual seizure, and the officer shall keep the property in his own custody or the custody of one of his subordinates and shall be responsible for due custody thereof

Provided that when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value the officer may sell it at once

Rule 24
Agricultural
produce

[Rule 16,
Sch II,
Bengal Act]

Where the property to be attached is agricultural produce the attachment shall be made by affixing a copy of the warrant of attachment—

- (a) where such produce is growing crop—on the land on which such crop has grown, or
- (b) where such produce has been cut or gathered,—on the threshing floor or place for treading out grain or the like or fodder-stack, on or in which it is deposited

and another copy on the outer door or on some other conspicuous part of the house in which the defaulter ordinarily resides or with the leave of the Collector on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain. The produce shall thereupon be deemed to have passed into the possession of the Collector

Rule 25
Provisions as
to agricultu-
ral produce
under attach-
ment.

[Rule 17,
Sch II,
Bengal Act]

(1) Where agricultural produce is attached, the Collector shall make such arrangements for the custody, watching tending cutting and gathering thereof as he may deem sufficient, and the Income-tax Officer shall bear such sum as the Collector shall require in order to defray the cost of such arrangements

(2) Subject to such conditions as may be imposed by the Collector in this behalf, either in the order of attachment or in any subsequent order, the defaulter may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it ; and, if the defaulter fails to do all or any of such acts, any person appointed by the Collector in this behalf may, subject to the like conditions, do all or any of such acts, and the costs incurred by such person shall be recoverable from the defaulter as if they were included in the certificate.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Collector may suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

(1) In the case of—

(a) a debt not secured by a negotiable instrument,

(b) a share in the capital of a corporation, or

(c) other movable property not in the possession of the defaulter except property deposited in, or in the custody of, any court,

Rule 26.
Debts and
shares etc.

[Rule 18 of
Schedule II,
Bengal Act]

the attachment shall be made by a written order prohibiting,—

(i) in the case of the debt—the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Collector ;

(ii) in the case of the share—the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(iii) in the case of the other moveable property (except as aforesaid)—the person in possession of the same from giving it over to the defaulter.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the Collector, and another copy shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and

in the case of the other moveable property (except as aforesaid) to the person in possession of the same

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt to the Collector and such payment shall discharge him as effectually as payment to the party entitled to receive the same

Rule 27
Attachment
of decree
[S 19 Bengal
Act]

(1) The attachment of a decree of a civil court for the payment of money or for sale in enforcement of a mortgage or charge shall be made by the issue to the civil court of a notice requesting the civil court to stay the execution of the decree unless and until—

(i) the Collector cancels the notice or

(ii) the Income-tax Officer or the defaulter applies to the court receiving such notice to execute the decree

5 of 1908

(2) Where a civil court receives an application under clause (ii) of sub-rule (1) it shall on the application of the Income-tax Officer or the defaulter and subject to the provisions of the Code of Civil Procedure 1908 proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate

(3) The Income-tax Officer shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof

Rule 28
Share in
moveable
property
[Rule 19
Schedule II
Bengal Act]

Where the property to be attached consists of the share or interest of the defaulter in moveable property belonging to him and another as co-owners the attachment shall be made by a notice to the defaulter prohibiting him from transferring the share or interest or charging it in any way

Rule 29
Salary of
Government
servants
5 of 1908
[Rule 20
Schedule II
Bengal Act]

Attachment of the salary or allowances of servants of the Government or a local authority may be made in the manner provided by rule 43 of Order 21 of the First Schedule to the Code of Civil Procedure 1908 and the provisions of the said rule shall for the purposes of this rule apply subject to such modifications as may be necessary

Rule 30
Attachment
of negotiable
instruments
[Rule 21
Schedule II
Bengal Act]

Where the property is a negotiable instrument not deposited in a court nor in the custody of a public officer, the attachment shall be made by actual seizure and the instrument shall be brought before the Collector and held subject to his orders

Rule 31
Attachment
of property
in custody of
Court or
public officer
[Rule 22
Schedule II
Bengal Act]

Where the property to be attached is in the custody of any court or public officer the attachment shall be made by a notice to such court or officer requesting that such property and any interest or dividend becoming payable thereon may be held subject to the further orders of the Collector by whom the notice is issued

Provided that where such property is in the custody of a court any question of title or priority arising between the Income-tax Officer and any other person not being the

defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such court.

In the case of attachment of movable property by actual seizure, the officer shall, after attachment of the property, prepare an inventory of all the property attached, and shall forward the same to the Collector. A copy of the inventory shall be delivered by the officer to the defaulter.

Rule 32.
Inventory.
[s. 9, Madras Act]

The attachment by seizure shall not be excessive, that is to say, the property attached shall be as nearly as possible proportionate to the amount specified in the warrant.

Rule 33.
Attachment not to be excessive.
[s. 14, Madras Act]

Attachment by seizure shall be made after sunrise and before sunset and not otherwise.

Rule 34.
Seizure between sunrise and sunset.
[s. 15, Madras Act]
[s. 47, Bengal Act]

The officer may break open any inner or outer door or window of any building and enter any building in order to seize any movable property if the officer has reasonable grounds to believe that such building contains movable property liable to seizure under the warrant and the officer has notified his authority and intention of breaking open if admission is not given. He shall, however, give all reasonable opportunity to women to withdraw.

Rule 35.
Power to break open doors etc.
[s. 19 & 20, Madras Act]
[s. 47, Bengal Act]

Sale

The Collector may direct that any movable property attached under this Schedule or such portion thereof as may seem necessary to satisfy the certificate shall be sold.

Rule 36. Sale.
[Rule 44, Schedule II, Bengal Act]

When any sale of movable property is ordered by the Collector, the Collector shall issue a proclamation, in the language of the district of the intended sale, specifying the time and place of sale and whether the sale is subject to confirmation or not.

Rule 37. Issue of proclamation.
[s. 165, first para, Bombay Act]

(1) Such proclamation shall be made by beat of drum or other customary mode,—

Rule 38. Proclamation how made.

(a) in the case of property attached by actual seizure—
(i) in the village in which the property was seized, or if the property was seized in a town or city, then in the locality in which it was seized, and

[s. 165, 2nd para, Bombay Act]

(ii) at such other places as the Collector may direct;

(b) in the case of property attached otherwise than by actual seizure, in such places, if any, as the Collector may direct.

[Rule 47, read with rule 48, Schedule II, Bengal Act]

(2) A copy of the proclamation shall also be affixed on a conspicuous part of the office of the Collector.

Rule 39 Sale
after fifteen
days

[Rule 48 Sch.
II, Bengal
Act] [s 167,
Bombay Act]
[s 22, Mad-
ras Act]

Rule 40 Sale
of agricul-
tural produce

[Rule 55
Sch. II,
Bengal Act]

Except where the property is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, no sale of moveable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiry of at least fifteen days calculated from the date on which a copy of the sale-proclamation was affixed in the Collector's office

(1) Where the property to be sold is agricultural pro-
duce the sale shall be held,—

- (a) if such produce is a growing crop—on or near the land on which such crop has grown, or
- (b) if such produce has been cut or gathered—at or near the threshing-floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited

Provided that the Collector may direct the sale to be held at the nearest place of public resort, if he is of opinion that the produce is thereby likely to sell to greater advantage

(2) Where, on the produce being put up for sale,—

(a) a fair price, in the estimation of the person holding the sale, is not offered for it and

(b) the owner of the produce, or a person authorised to act on his behalf, applies to have the sale postponed till the next day or if a market is held at the place of sale, the next market day,

the sale shall be postponed accordingly, and shall be then completed, whatever price may be offered for the produce

Rule 41 Special provisions relating to growing crops.

[Rule 56,
Schedule II,
Bengal Act.]

(1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored the day of the sale shall be so fixed as to admit of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing

(2) Where the crop from its nature does not admit of being stored or can be sold to a greater advantage in an unripe state (e.g., as green wheat) it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending or cutting or gathering the crop

Rule 42 Sale to be by auction.

[s 23 Mad-
ras Act]

The property shall be sold by public auction in one or more lots as the officer may consider advisable and if the amount to be realised by sale is satisfied by the sale of a portion of the property the sale shall be immediately stopped with respect to the remainder of the lots

(1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be resold.

Rule 43: Sale by public auction.
[Rule 57, Schedule II, Bengal Act.]

(2) On payment of the purchase-money, the officer holding the sale shall grant a certificate specifying the property purchased, the price paid and the name of the purchaser, and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the defaulter and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

No irregularity in publishing or conducting the sale of movable property shall vitiate the sale, but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a civil court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Rule 44: Irregularity not to vitiate sale, but any person injured may sue.
[Rule 58, Schedule II, Bengal [Act.]

Notwithstanding anything contained in this Schedule, where the property to be sold is a negotiable instrument or a share in a corporation, the Collector may, instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker.

Rule 45 : Negotiable instruments and shares in corporations.
[Order 21, Rule 76, G.P.C.]

Where the property attached is current coin or currency notes, the Collector may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the certificate, be paid over to the Income-tax Officer.

Rule 46: Order for payment of coin or currency notes to the Income-tax Officer.
[Order 21, Rule 56, G.P.C.]

PART III

Attachment And Sale of Immovable Property. *Attachment.*

Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.

Rule 47: Attachment.

A copy of the order of attachment shall be served on the defaulter.

Rule 48: Service of notice of attachment [S. 27, Madras Act.]

SCH. II

Rule 49 :
Proclamation
of attach-
ment.

The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the Collector's office.

Rule 50: At-
tachment to
relate back
from the date
of service of
notice

Where any immovable property is attached under this Schedule, the attachment shall relate back to, and take effect from, the date on which the notice to pay the arrears, issued under this Schedule, was served upon the defaulter.

Sale

Rule 51. Sale
and procla-
mation of
sale

(1) The Collector may direct that any immovable property which has been attached, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

[Rule 44,
Sch II,
Bengal Act]

[Rule 46(1),
S.h. I,
Bengal Act.]

(2) Where any immovable property is ordered to be sold, the Collector shall cause a proclamation of the intended sale to be made in the language of the district.

Rule 52,
Contents of
proclamation.

[Rule 46(2),
Sch II,
Bengal Act]

A proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible,—

- (a) the property to be sold;
- (b) the revenue, if any, assessed upon the property or any part thereof;
- (c) the amount for the recovery of which the sale is ordered; and
- (d) any other thing which the Collector considers it material for a purchaser to know, in order to judge the nature and value of the property.

Rule 53-
Mode of
making pro-
clamation.

[Rule 47,
Sch II,
Bengal Act]

(1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Collector.

(2) Where the Collector so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both; and the cost of such publication shall be deemed to be costs of the sale.

(3) Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Collector, otherwise be given.

No sale of immovable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiration of at least thirty days calculated from the date on which a copy of the proclamation of sale has been affixed on the property or in the office of the Collector, whichever is later.

Rule 54:
Time of sale.
[Rule 48,
Sch. II,
Bengal Act.]

The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Collector.

Rule 55:
Sale to be by auction.
[S. 36 (First part) Madras Act.]

(1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent. on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be re-sold.

Rule 56:
Deposit by purchaser and resale in default.
[Rule 68,
Sch. II,
Bengal Act.]

(2) The full amount of purchase-money payable shall be paid by the purchaser to the Collector on or before the fifteenth day from the date of the sale of the property.

Rule 69:
Sch. II,
Bengal Act.]

In default of payment within the period mentioned in the preceding rule, the deposit may, if the Collector thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

Rule 57:
Procedure in default of payment.
[Rule 70,
Sch. II,
Bengal Act.]

All persons bidding at the sale shall be required to declare if they are bidding on their own behalf or on behalf of their principals. In the latter case they shall be required to deposit their authority, and in default their bids shall be rejected.

Rule 58:
Authority to bid.
[S. 36 (Fifth) Madras Act.]

(1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Collector to set aside the sale, on his depositing—

Rule 59:
Application to set aside sale of immovable property on deposit.

(a) for payment to the Income-tax Officer, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of six and a quarter per cent. per annum, calculated from the date of the proclamation of sale to the date when the deposit is made; and

[S. 22,
Bengal Act.]

(b) for payment to the purchaser, as penalty, a sum equal to five per cent. of the purchase-money, but not less than one rupee.

(2) Where a person makes an application under the next rule for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

Rule 60 : Where immovable property has been sold in execution of a certificate, the Income-tax Officer, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Collector on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale

[s 23 Bengal Act]

Provided as follows :—

- (a) no sale shall be set aside on any such ground unless the Collector is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity, and
- (b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in execution of the certificate

Rule 61 : At any time within thirty days of the sale the purchaser may apply to the Collector to set aside the sale on the ground that the defaulter had no saleable interest in the property sold.

[s 24 Bengal Act]

[s 24 Bengal Act]

Rule 62 : Confirmation of sale (1) Where no application is made for setting aside the sale under the foregoing rules or where such an application is made and disallowed by the Collector, the Collector shall (if the full amount of the purchase-money has been paid) make an order confirming the sale, and, thereupon, the sale shall become absolute

[s 25 Bengal Act]

(2) Where such application is made and allowed, and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges the deposit is made within thirty days from the date of the sale, the Collector shall make an order setting aside the sale

Provided that no order shall be made unless notice of the application has been given to the persons affected thereby

Rule 63 : Return of purchase money in certain cases Where a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase, together with the penalty, if any, deposited for payment to the purchaser, and such interest as the Collector may allow, shall be paid to the purchaser

[Rule 73, Sch II, Bengal Act]

Rule 64 : Sale certificate

[Rule 74, Sch II, Bengal Act] (1) Where a sale of immovable property has become absolute, the Collector shall grant a certificate specifying the property sold, and the name of the person who at the time of sale is declared to be the purchaser

[s 38 (5), Madras Act]

[s 181, Bombay Act] (2) Such certificate shall bear date the day on which the sale became absolute

(1) Where an order for the sale of immovable property has been made, if the defaulter can satisfy the Collector that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the defaulter, the Collector may, on his application, postpone the sale of the property comprised in the order for sale, on such terms and for such period as he thinks proper, to enable him to raise the amount.

Rule 65:
Postpone-
ment of sale
to enable
defaulter to
raise amount
due under
certificate.
[Rule 66:
Sch. II,
Bengal Act.]

(2) In such case the Collector shall grant a certificate to the defaulter, authorising him, within a period to be mentioned therein, and notwithstanding anything contained in this Schedule, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the defaulter, but to the Collector :

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Collector.

Every re-sale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore provided for the sale.

Rule 66:
Fresh procla-
mation before
re-sale.

Where the property sold is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

[Rule 71,
Sch. II,
Bengal Act.]

Rule 67:
Bid of co-sha-
rer to have
preference.

[Rule 72,
Sch. II,
Bengal Act.]

PART IV

Appointment of receiver.

(1) Where the property of a defaulter consists of a business, the Collector may attach the business and appoint a person as receiver to manage the business.

Rule 68:
Appointment
of receiver
for business.

(2) Attachment of a business under this rule shall be made by an order prohibiting the defaulter from transferring or charging the business in any way and prohibiting all persons from taking any benefit under such transfer or charge, and intimating that the business has been attached under this rule. A copy of the order of attachment shall be served on the defaulter, and another copy shall be affixed on a conspicuous part of the premises in which the business is carried on and on the notice board of the Collector's Office.

Rule 69 - Where immovable property is attached, the Collector may, instead of directing a sale of the property, appoint a person as receiver to manage such property.
 Appoinment of receiver for immovable property
 [s 28, Madras Act] [s 159, Bombay Act]

Rule 70 Powers of receiver (1) Where any business or other property is attached and taken under management under the foregoing rules, the receiver shall, subject to the control of the Collector, have such powers as may be necessary for the proper management of the property and the realisation of the profits, or rents and profits, thereof.

(2) The profits, or rents and profits, of such business or other property shall, after defraying the expenses of management, be adjusted towards discharge of the arrears, and the balance, if any, shall be paid to the defaulter.

Rule 71 Withdrawal of management [s 34, Madras Act] The attachment and management under the foregoing rules may be withdrawn at any time at the discretion of the Collector, or if the arrears are discharged by receipt of such profits and rents or are otherwise paid.

PART V

Arrest and detention of the defaulter

Rule 72 Notice to show cause (1) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Collector has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Collector, for reasons recorded in writing, is satisfied—

- (a) that the defaulter, with the object or effect of obstructing the execution of the certificate, has after the receipt of the certificate in the Collector's office dishonestly transferred, concealed, or removed any part of his property, or
- (b) that the defaulter has, or has had since the receipt of the certificate in the Collector's office, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

(2) Notwithstanding anything contained in sub-rule (1), a warrant for the arrest of the defaulter may be issued by the Collector if the Collector is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Collector.

(3) Where appearance is not made in obedience to a notice issued and served under sub-rule (1), the Collector may issue a warrant for the arrest of the defaulter

(4) Every person arrested in pursuance of a warrant of arrest under sub-rule (2) or sub-rule (3), shall be brought before the Collector as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for journey):

Provided that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him, such officer shall at once release him.

When a defaulter appears before the Collector in obedience to a notice to show cause or is brought before the Collector under the preceding rule, the Collector shall proceed to hear the Income-tax Officer and take all such evidence as may be produced by him in support of execution by arrest, and shall then give the defaulter an opportunity of showing cause why he should not be committed to the civil prison.

Rule 73:
Hearing.
[s. 29 (2),
Bengal Act.]

Pending the conclusion of the inquiry, the Collector may, in his discretion, order the defaulter to be detained in the custody of such officer as the Collector may think fit or release him on his furnishing security to the satisfaction of the Collector for his appearance when required.

Rule 74:
Custody pending hearing.
[s. 29 (3),
Bengal Act.]

(1) Upon the conclusion of the inquiry, the Collector may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Rule 75:
Order of detention.
[s. 29(4) and
(5), Bengal Act.]

Provided that in order to give the defaulter an opportunity of satisfying the arrears, the Collector may before making the order of detention leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding 15 days, or release him on his furnishing security to the satisfaction of the Collector for his appearance at the expiration of the specified period if the arrears are not so satisfied.

(2) When the Collector does not make an order of detention under sub-rule (1), he shall, if the defaulter is under arrest, direct his release.

(1) Every person detained in the civil prison in execution of a certificate may be so detained,—

Rule 76:
Detention in and release from prison.

(a) where the certificate is for a demand of an amount exceeding fifty rupees—for a period of six months, and

[s. 31, Bengal Act.]

(b) in any other case—for a period of six weeks:

Provided that he shall be released from such detention—

(i) on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison, or

(ii) on the certificate being otherwise fully satisfied, or cancelled, or

(iii) on the request of the Income-tax Officer or of the Collector :

Provided also, that he shall not be released from such detention under clause (ii) or clause (iii) without the order of the Collector

(2) A defaulter released from detention under this rule shall not, merely by reason of his release, be discharged from his liability for the arrears, but he shall not be liable to be re-arrested under the certificate in execution of which he was detained in the civil prison

Rule 77
Release

[s 30 Bengal
Act]

(1) The Collector may order the release of a defaulter who has been arrested in execution of a certificate upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Collector and that he has not committed any act of bad faith

(2) If the Collector has ground for believing the disclosure made by a defaulter under sub-rule (1) to have been untrue, he may order the re-arrest of the defaulter in execution of the certificate but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by the preceding rule

Rule 78

Release on
ground of illness

[s 32, Bengal
Act]

(1) At any time after a warrant for the arrest of a defaulter has been issued, the Collector may cancel it on the ground of his serious illness

(2) Where a defaulter has been arrested the Collector may release him if, in the opinion of the Collector, he is not in a fit state of health to be detained in the civil prison

(3) Where a defaulter has been committed to the civil prison he may be released therefrom by the Collector, on the ground of the existence of any infectious or contagious disease, or on the ground of his suffering from any serious illness

(4) A defaulter released under this rule may be re-arrested but the period of his detention in the civil prison shall not in the aggregate exceed that authorized by this Schedule

Rule 79

Entry into
dwelling house
use

[s 47, Bengal
Act]

For the purpose of making an arrest under this Schedule—

(a) no dwelling house shall be entered after sun-set and before sun-rise,

(b) no outer door of a dwelling house shall be broken open unless such dwelling house or a portion thereof is in the occupancy of the defaulter and he or

other occupant of the house refuses or in any way prevents access thereto; but, when the person executing any such warrant has duly gained access to any dwelling house, he may break open the door of any room or apartment if he has reason to believe that the defaulter is likely to be found there;

- (c) no room, which is in the actual occupancy of a woman who according to the customs of the country does not appear in public, shall be entered into unless the officer authorised to make the arrest has given notice to her that she is at liberty to withdraw and has given her reasonable time and facility for withdrawing.

The Collector shall not order the arrest and detention in the civil prison of—

- (a) a woman, or

- (b) any person who, in his opinion, is a minor or of unsound mind.

Rule 80:
Prohibition
against arrest
of women or
minors etc.

[s. 33, Bengal
Act.] [s. 48,
Madras Act.]

PART VI

Miscellaneous

Every Collector or other officer acting under this Schedule shall, in the discharge of his functions under this Schedule, be deemed to be acting judicially within the meaning of the Judicial Officer's Protection Act, 1850.

Rule 81:
Officers deemed to be
acting judicially.
[s. 48, Bengal
Act.] 18 of 1850.

Every Collector or other officer acting under the provisions of this Schedule shall have the powers of a civil court for the purpose of receiving evidence, administering oaths enforcing the attendance of witnesses and compelling the production of documents.

Rule 82 :
Power to take
evidence.
[s. 42, Bengal
Act.]

No certificate shall cease to be in force by reason of the death of the defaulter.

Rule 83 :
Continuance
of certificate.
[s. 42, Bengal
Act.]

If at any time after the issue of the certificate by the Income-tax Officer to the Collector the defaulter dies, the proceedings under this Schedule (except arrest and detention) may be continued against the legal representative of the defaulter, and the provisions of this Schedule shall apply as if the legal representative were the defaulter.

Rule 84 :
Procedure on
death of
defaulter.
[s. 43, Bengal
Act.]

(1) An appeal from any original order passed by the Collector under this Schedule shall lie to the revenue authority to which appeals ordinarily lie against the orders of the Collector under the law relating to land revenue of the State concerned.

Rule 85 :
Appeals.
[s. 51, Bengal
Act.]

(2) No appeal shall lie from any order of the Collector which is, under any rule in this Schedule, conclusive

(3) Every appeal under this rule must be presented within thirty days from the date of the order appealed against

9 of 1908.

(4) Section 5 of the Indian Limitation Act, 1908, shall apply to appeals under this rule

(5) Pending the decision of any appeal, execution of the certificate may be stayed if the appellate authority so directs, but not otherwise

[s 52 Bengal Act]

(6) No appeal shall lie from any order passed on appeal under this rule

Rule 86
Review
[s 54 Bengal Act]

Any order passed under this Schedule may, after notice to all persons interested, be reviewed by the officer who made the order, or by his successor in office on account of mistake or error either in the making of the order or in the course of any proceeding under this Schedule in which the order was made

Rule 87
Recovery from surety
[s 50 Madras Act]

Where any person has under this Schedule become surety for the amount due by the defaulter, he may be proceeded against under this Schedule as if he were the defaulter

Rule 88
Penalties
[s 58 Bengal Act]

Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein intending thereby to prevent that property or interest therein from being taken in execution of a certificate, shall be deemed to have committed an offence punishable under section 206 of the Indian Penal Code 1860

Rule 89
Subsistence allowance
[Rule 78 Schedule II, Bengal Act]

(1) When a defaulter is arrested or detained in the civil prison the sum payable for the subsistence of the defaulter from the time of arrest until he is released shall be borne by the Income-tax Officer

(2) Such sum shall be calculated on the scale fixed by the State Government for the subsistence of judgment-debtors arrested in execution of a decree of a civil court

(3) Sum payable under this rule shall be deemed to be costs in the proceeding

Provided that the defaulter shall not be detained in the civil prison or arrested on account of any sum so payable

Rule 90
Forms
[(Contrast)
s 84 Bengal Act]

The Central Board of Revenue may prescribe the form to be used for any order, notice warrant, or certificate to be issued under this Schedule

Rule 91
Power to make rules
[s 39, Bengal Act]

(1) The Central Board of Revenue may make rules consistent with the provisions of this Act, regulating the procedure to be followed by Collectors and other officers acting under this Schedule

(2) In particular, and without prejudice to the generality of the power conferred by sub-rule (1), such rules may provide for all or any of the following matters, namely—

- (a) the manner in which any property sold under this Schedule may be delivered;
- (b) the execution of a document or the endorsement of a negotiable instrument or a share in a corporation, by or on behalf of the Collector, where such execution or endorsement is required to transfer such negotiable instrument or share to a person who has purchased it under a sale under this Schedule;
- (c) the procedure for dealing with resistance or obstruction offered by any person to a purchaser of any immovable property sold under this Schedule, in obtaining possession of the property;
- (d) the fees to be charged for any process issued under this Schedule;
- (e) the scale of charges to be recovered in respect of any other proceeding taken under this Schedule;
- (f) recovery of poundage fee;
- (g) the maintenance and custody, while under attachment, of livestock or other movable property, the fees to be charged for such maintenance and custody, the sale of such livestock or property, and disposal of proceeds of such sale;
- (h) the mode of attachment of a business.

Nothing in this Schedule shall affect any provision of this Act whereunder the tax is a first charge upon any asset. Rule 92:
Saving regarding charge.

THE THIRD SCHEDULE

PROCEDURE FOR DISTRAINT BY INCOME-TAX OFFICER

[See section 235(5)]

Where any distraint and sale of movable property are to be effected by any Income-tax Officer authorised for the purpose, such distraint and sale shall be made, as far as may be, in the same manner as attachment and sale of any movable property attachable by actual seizure; and the provisions of the Second Schedule relating to attachment and sale shall, mutatis mutandis, apply in respect of such distraint and sale. Rule 1 :
Distraint and sale.
[New]

Draft Report on the Income tax Act.

APPENDIX II

Table showing the provision in the existing Act and the corresponding provision if any as proposed¹ in Appendix I

Existing provision	Corresponding provision as proposed in Appendix I
Section 1	Clause 1
Section 2(1)	Clause 2(1)
Section 2(2)	Clause 2(5)
Section 2(3)	Clause 2(5)
Section 2(4)	Clause 2(9)
Section 2(4A)	Clause 2(10)
Section 2(4B)	Clause 2(11)
Section 2(5)	Clause 2(12)
Section 2(5A)	Clause 2(13)
Section 2(5B)	Clause 2(14)
Section 2(6)	Clause 2(16)
Section 2(6A)	Clause 2(17)
Section 2(6AA)	Clause 2(18) and Explanation.
Section 2(6B)	Clause 2(19)
Section 2(6C)	Clause 2(20) items i) to (vii) and Explanation
Section 2(6D)	Clause 2(23)
Section 2(6E)	Clause 2(24)
Section 2(7)	Clause 2(21)
Section 2(7A)	Clause 2(22) sub Clause (i) and (u)
Section 2(8)	Clause 2(25)
Section 2(8A)	Clause 2(15)
Section 2(9)	Clause 2(27) Sub-Clause (i) to (vi)
Section 2(10)	Clause 2(28)
Section 2(11)	Clause 5
Section 2(12)	Clause 2(30)
Section 2(13)	Clause 2(31)
Section 2(14)	Clause 2(32)
Section 2(14A)	Omitted.
Section 2(15) part	Clause 2(36)
Section 2(15) part	Clause 2(37)
Section 2(16)	Clause 2(38)
Section 3	Clause 3
Section 4(1)—	Clause 4(1) (a)
Clause (a) part	Clause 4(2)
Clause (a) part	Clause 4(1) (b)
Clause (b) (i)	Clause 4(1) (c)
Clause (b) (ii)	

¹ The provision in Appendix I has been described as "Clause" to distinguish it from the existing provision, which is described as "Section"

"", in order to "

Clause (b) (iii)	Clause 4(1) (d)
Clause (c)	Clause 4(2)
First proviso	Omitted, <i>see</i> notes.
Second proviso	Clause 11(4) (iv)
Third proviso	Clause 11(4) (i)
Fourth proviso	Clause 11(4) (ii)
Fifth proviso	Clause 11(4) (iii)
Explanation 1	Clause 4(3)
Explanation 2	Clause 9(ii)
Explanation 3	Clause 9(iii)
Explanation 4	Clause 4(1) (e) (f) (g)
Section 4(2)	Clause 10
Section 4(3)—	
Clause (i), main para	Clause 12(1)(i), main para.
Clause (i), proviso (a) opening line	Clause 12(1)(i), proviso, part.
Clause (i), proviso (a) (i)	Clause 12(1)(ii) (b)
Clause (i), proviso (a) (ii)	Clause 12(1) (ii) (a)
Clause (i) proviso (b), part	Clause 12(2)
Clause (i), proviso (b), part	Clause 12(3)
Clause (i), proviso (b), part	Clause 12(4)
Clause (i), proviso (c)	Clause 12(1) (i), proviso, part.
Clause (ii)	Clause 12(5)
Clause (iii), part	Clause 11(22) (i)
Clause (iii), part	Clause 11(22) (ii)
Clause (iv)	Clause 11(26)(i)
Clause (v)	Repealed.
Clause (vi)	Clause 11(15)
Clause (via) para. (a)	Clause 11(7)(i)
Clause (via), para. (b) (<i>See</i> Finance Act, 1958)	Clause 11(6)
Clause (vii)	Clause 11(3)
Clause (viii)	Clause 11(1)
Clause (ix)	Clause 11(26) (ii)
Clause (x) (a)	Clause 11(21)
Clause (x) (b) } Clause (x) (c) } Clause (x) (d) } Clause (x) (e) }	Clause 11(7), items (ii) to (i)
Clause (xi)	Omitted: <i>see</i> notes.
Clause (xia), (<i>See</i> Finance Act, 1958)	Clause 11(25)
Clause (xii)	Clause 11(18)
Clause (xiii)	Clause 11(23)
Clause (xiv)	Clause 11(8)
Clause (viva), main para	Clause 11(9), opening part.
Clause (xiva), 1st Prov.	Clause 11(9) (ii)
Clause (xiva), 2nd Prov.	Clause 11(9) (i)
Clause (xiva), Explanation	Clause 11(9), Explanation 2.
Clause (xv)	Clause 11(10)
Clause (xvi)	Clause 11(5) (i)
Clause (xvii)	Clause 11(16) (i)
Clause (xviii)	Clause 11(16) (ii)
Clause (xviii)	Clause 11(16) (iv)

Clause (xii) *ii*
 Clause (xix)
 Clause (xx)
 Clause (xvi)
 Clause (x vi)
 Last para part
 Last para part

Section 4A—

Clause (a) (i)
 Clause (a) (ii)
 Clause (a) (iii)
 Clause (a) (iv)
 Clause (b)
 Clause (c)

Section 4B (i)

Section 4B(b)

Section 4B (c)

Section 5 (i)

Section 5(1A) earlier part

Section 5(1A) latter part

Section 5(2) earlier part

Section 5(2) latter part

Section 5(3) earlier part

Section 5(3) latter part

Section 5(4)

Section 5(4) earlier part

Section 5(4) latter part

Section 5(5) earlier part

Section 5(5) earlier part

Section 5(5A) latter part

Section 5(6)

Section 5(7) words for the purposes of this Act

Section 5(7) (i)

Section 5(7) (ii)

Section 5(7A) main para earlier part

Section 5(7A) main para latter part

Section 5(7A) Explanation

Section 5(7B) earlier part

Section 5(7B) latter part

Section 5(7C) main para

Section 5(7C) in Prov

Section 5(7C) and Provision

Section 5(8)

Section 5A

Section 6

Section 7(1)

Section 7(1) main para, part

Section 7(1) main para, part

Section 7(1) main para, part

Clause 11(16) (iii)

Clause 11(19)

Clause 11(5) (ii)

Clause 11(27)

Clause 11(28)

Clause 12(6)

Clause 12 Explanation (a)

Clause 6(1) (a)

Clause 6(1) (b)

Clause 6(1) (c)

Omitted see notes

Clause 6(2)

Clause 6(7)

Clause 6(6) part

Clause 6(6) part

Omitted as unnecessary

Clause 127

Clause 128(1) part

Clause 131(1)

Clause 128(1) part

Clause 131(2)

Clause 128(1) part

Clause 128(2)

Clause 128(3)

Clause 129(1)

Clause 131(3) (a)

Clause 131(4)

Clause 131(5)

Clause 131(6)

Clause 129(4)

Clause 131(7) 1st para

Omitted see notes.

Clause 129(2)

Clause 129(3)

Clause 132(1)

Clause 132(4) main para

Clause 132(4) Explanation.

Clause 130(2)

Clause 140

Clause 133 main para

Clause 133 Prov

Clause 126 Explanation 1

Clause 130(1)

Omitted in view of the proposed abolition of the Appellate Tribunal

Clause 14

Clause 15

Clause 17(1)

Clause 17(2)

Section 7(1), 1st Proviso.	Clause 88(1)(c)
Section 7(1), 2nd Proviso.	Clause 213
Section 7(1), Expl. 1	Clause 17(3)
Section 7(1), Expl. 2, main part	Clause 17(4)
Section 7(1), Expl. 2, Prov., part	Clause 11(11)
Section 7(1), Expl. 2, Prov., part	Clause 11(12)
Section 7(1), Expl. 2, Prov., part	Clause 11(14)
Section 7(1), Expl. 2, Prov., Part	Clause 296; <i>See also</i> clause 11(13).
Section 7(2)(i)	Clause 16(i)
Section 7(2)(ii)	Clause 16(ii)
Section 7(2)(iii), main para.	Clause 16(iii), earlier half.
Section 7(2)(iii), Prov.	Clause 16(iii), latter half.
Section 7(2)(iii).	Clause 16 (i)
Section 8, 1st Para.	Clause 18
Section 8, 1st proviso, earlier part	Clause 19
Section 8, 1st proviso, latter part	Clause 21
Section 8, 2nd proviso	Clause 87(i)
Section 8, 3rd proviso	Clause 188. Compare clause 87(ii) also.
Section 8, Explanation—	
Clause (a), part	Clause 20(1)(i)
Clause (a), last lines	Clause 20(2), main para. part and clause 40(d), part.
*Clause (b), first line	Clause 20(2), Expl.
Clause (b), part	Clause 20(1)(ii)
Clause (b), last lines	Clause 20(2), main para. part and clause 40(d), part.
Section 9(1)—	
Opening para.	Clause 22
Clause (i), part	Clause 24(1)(i)(a)
Clause (i), part	Clause 24(1)(ii)(b)
Clause (ii), main para.	Clause 24(1)(iii)
Clause (ii), Proviso	Omitted, as obsolete.
Clause (iii)	Clause 24(1)(iv)
Clause (v), main para.	Clause 24(1), items (v) to (viii)
Clause (iv), proviso	Clause 25
Clause (v)	Clause 24(1)(ia)
Clause (vi)	Clause 24(1)(x)
Clause (vi)	Clause 24(1)(xi)
Explanation	Clause 27(iii)
Section 9(2)—	
First para.	Clause 23(1)
1st Prov.	Clause 23(3)
2nd proviso, except last line	Clause 23(4)
2nd proviso, last line	Clause 24(2)
3rd proviso	Clause 24(1)(i) and 24(1) Expl.
Section 9(3)	Clause 26
Section 9(4)(a)	Clause 27(i)
Section 9(4)(b)	Clause 27(ii)
Section 9(4)(c) (<i>See Finance Act, 1958</i>)	Clause 27(v)

Section 10, Sub-section (1)

Section 10, Sub-section (2)—

Opening paragraph

Clause (i) without the proviso

Clause (i) proviso

Clause (ii), without the proviso

Clause (ii), proviso

Clause (iii) main part

Clause (iii), proviso, part

Clause (iii) proviso, part (last 17 words)

Clause (iv), Explanation

Clause (iv), part (for buildings)

Clause (iv) part (for machinery etc.)

Clause (v) part (for stocks etc.)

Clause (v) part (for buildings)

Clause (v) part (for machinery etc.)

Clause (vi) first para. part

Clause (vi) first para. part

Clause (vi), second para., with its clauses (a) (b) and (c)

Clause (vi) proviso (a)

Clause (vi), proviso (b) part

Clause (vi) proviso (b), part (referring to pre 1939 cars)

Clause (vi) proviso (c)

Clause (vii), part

Clause (vii), part

Clause (viii) part

Clause (viii) main para.

Clause (viii), proviso (a)

Clause (viii), proviso (b) earlier part

Clause (viii), proviso (b) latter half

Clause (viii), proviso last para.

Clause (ix), first para.

Clause (ix), first proviso

Clause (xi) Second Proviso part

Clause (xi) Second proviso part

Clause (xi) Third proviso

Clause (xi), Fourth proviso, part

Clause (xi), Fourth proviso part

Clause (xi), Fifth proviso

Clause (xi)

Clause (x), earlier part

Clause (x) latter part

Clause (x), main para.

Clause 28, opening paragraph and sub-clause (i)

Omitted, as deductions have been listed in separate clauses

Clause 30(a)(i)(a)

Clause 38(1)(a)

Clause 30(a)(ii)(b)

Clause 38(1)(b)

Clause 36(3), main part

Clause 40(a)(i)

Omitted as repeated in existing section 10(4)(b) See notes to Clause 40

Clause 36(3), Explanation

Clause 30(e)

Clause 31(ii)

Clause 36(1)

Clause 30(a)(ii)

Clause 31(i)

Clause 32(1)(i)

Clause 32(1)(ii)

Omitted, as obsolete.

Clause 34(1), part

Clause 32(2)

Omitted

Clause 34(2)

Clause 32(1)(iii), main para.

Clause 32(1)(iii), Explanation

Clause 34(2)(ii)

Clause 33

Clause 34(1), part

Clause 34(3)(a) Exception

Clause 34(3)(a) main para

Clause 34(3)(b)

Clause 32(1)(iv) main para., part

Clause 32(1)(iv), main para., part

Clause 41(2), main para

Clause 41(2), Explanation 2

Clause 32(1)(iv) Explanation

• Clause 41(2), main para and Explanation 1

Omitted in view of proposed draft for s 10(2) (iii), 3rd proviso

Clause 41(2), Explanation 3

Clause 36(3)

Clause 30(b)

Clause 38(2)

Clause 36(2), opening para.

last para earl er half

last para latter half

Section 10(6)

Section 10 (7)

Sect on 11

Sect on 12 —

Sub-section (1)

Sub section (1A)

Sub-sect on (1B)

Sub sect on (2) —

main para part

main para part

Prov so

Sub sections (3) & (4) —

part

part

Sub section (5) —

part

part

Sect on 12A

Sect on 12 4A

Section 12B

Sub-sect on(1)—

main para earlier part

main para latter part

1st proviso part

1st proviso part

2nd prov so earl er half

2nd proviso latter half part

2nd prov so latter half part

Sub-section (2)—

opening lines

Clause (i)

Clause (ii) part

Clause (ii) part

Clause (ii) part

1st proviso

2nd proviso part

2nd prov so part

3rd proviso part

3rd prov so part

3rd proviso part

3rd prov so part

3rd proviso part

4th proviso

Sub sect on (3)—

main para earl er half part

main para earl er half part

main para earl er half part

Clause 28 (ii), opening lines
part

Clause 123 (i) main para

Clause 28 (iii)

Clause 44 part

Repealed

Clause 58 (i)

Clause 58 (2) (i)

Omitted as spent

Clause 60 (i)

Clause 60 (iii)

Clause 61 (a)

Clause 60 (ii)

Clause 62(2)

Clause 61 (b)

Clause 62 (i)

Clause 39

Clause 187

Clause 45

Clause 46

Clause 47 (i)

Clause 47 (ii)

Clause 47 (iii)

Clause 42 (i) Explanation 5

Clause 42 (7) Explanation 2

Clause 48, opening lines

Clause 48 (i)

Clause 48 (ii)

Clause 50 (i) (a)

Clause 57 (b)

Clause 54

Clause 51 (i)

Clause 51 (2)

Clause 50 (i) (b)

Clause 50 (2) (i) (c)

Clause 50 (3) (i) part

Clause 50 (3) (ii) (b)

Clause 50 (4) (b)

Clause 52

Clause 50 (2) opening lines

Clause 50 (2) (i) (a)

Clause 50 (3) (i) part

main para, earlier half, part	Clause 50 (3) (ii) (a)
main para, earlier half, part	Clause 50 (4) (a)
main para, latter half	Clause 50, Explanation.
Proviso (1), part	Clause 50 (2), opening lines of sub-clause (i).
Proviso (i), part	Clause 50 (2)(i) (b)
Proviso (i), part	Clause 50(3) (i), part.
Proviso (ii)	Clause 50 (2) (ii).
Sub-section (4)—	
Clause (a)	Clause 55
Clause (b)	Clause 56.
Section 13, main para	Clause 150 (1), main para.
Section 13, Proviso, part	Clause 150 (1), Proviso.
Section 13, Proviso, part	Clause 150 (2)
Section 14 (1)	Clause 11 (2)
Section 14(2) to (5) :—	As given below.
<i>For income-tax</i>	
Sub-section (2),	Clause 87 (iii)
Clause (a)	
Sub-section (2),	Clause 87 (iv)
Clause (aa), main para	
Sub-section (2),	Clause 87 (v)
Clause (b)	
Sub-section (3), main para	Clause 82 (1)
Sub-section (3), Explanation	Clause 82 (2)
Sub-section (3), Proviso	Clause 82 (3)
Sub-section (4)	Clause 83
Sub-section (5)	Clause 84
<i>For Super-tax</i>	
Sub-section (2) (aa), main para	Clause 111, part.
Sub-section (2) (aa), proviso	Clause 111, part.
Sub-section (3)	Clause 105
Sub-section (4)	Clause 106
Sub-section (5)	Clause 107
Section 15	
Sub-section (1)	Clause 88 (1) (a)
Sub-section (2)	Clause 88 (1) (b)
Sub-section (2A)	Clause 88 (2)
Sub-section (3)	Clause 83 (3)
Section 15A, earlier part	Clause 81
Section 15A, latter part	Omitted.
Section 15-B :—	As given below :—
<i>For income-tax</i>	
Sub-section (1), main para	Clause 89 (1), part.
Sub-section (1), 1st Proviso	Sec "For Super-tax", below.
2nd Proviso (a)	Clause 89 (2)
2nd Proviso (b)	Clause 89 (3)
Sub-section (2), main para	Clause 89 (5)
Sub-section (2), Explanation	Clause 89 (6)

Sub-section (2A)

Sub-section (3)

For Super-tax

Section 15 B, Part

Section 15 B (1) 1st Proviso

Section 15C—

For income-tax

Sub-section (1)

Sub-section (2), main para

Sub-section (2) Proviso

Sub-section (3)

Sub-section (4)

Sub-section (5)

Sub-section (6)

For super tax—

Section 15 C

Section 16(1), (a), earlier half

Section 16 (1) (a), latter half

Section 16(1) (b), main para.

Section 16 (1) (b), Proviso

Section 16 (1), (c)—

Main para, earlier half

Main para latter half

1st Proviso

2nd Proviso, part

2nd Proviso part

3rd Proviso earlier half

3rd Proviso, latter half

Section 16 (2), main para part

Section 16 (2) main para, part

Section 16 (2) main para, part

Section 16(2) Proviso

Section 16 (3)

Section 17 (1), main para

Section 17 (1), 1st Proviso, earlier part

Section 17 (1) 1st Proviso, latter part

Section 17 (1) 2nd Proviso

Section 17 (2), part

Section 17 (2), part

Section 17 (2), part

Section 17 (3) part

Section 17 (3) part

Section 17 (3), part

Section 17 (4)

Section 17 (5)

Omitted, as spent

Clause 89 (4)

Clause 109 (1), part

Clause 109 (2)

As given below —

Clause 85 (1)

Clause 85 (2)

Clause 85 (3)

Clause 85 (4)

Clause 86

Clause 82 (5)

Clause 82(6)

Clause 110, part

Clause 68

Omitted See Section 15 A latter half

Clause 69(1)

Clause 69 (4)

Clause 63

Clause 64

Clause 66, (a)

Clause 66, (b)

Omitted

Clause 65 (1)

Clause 65 (2)

Clause 8

Clause 59 (1)

Clause 59 (2)

Clause 59 (3)

Clause 67

Clause 124 (1)

Clause 124 (2)

Clause 124 (3)

Clause 124 (4)

Clause 88 (1), opening lines.

Clause 89 (1), part.

Clause 121

Clause 109 (1), part

Clause 110, part

Clause 111, part

Omitted, as s. 14 (2) (c) is no longer on the statute book.

Omitted consequent on omission of section 15A, latter half
Contrast definition of 'average rate of income tax' (an expression which has been used in the Chapter on Rebates)

Section 17 (6), opening lines, part	Clause 125, opening lines
Section 17 (6), opening lines, part, (words "including super-tax").	Omitted
Section 17 (6), clause (i),	Clause 125 (a)
Section 17 (6), clause (ii), main para	Clause 125 (b), main para
Section 17 (6), Clause (ii), Proviso	Clause 125 (b), Prov.
Section 17 (7), part	Clause 126
Section 17 (7), part	Covered by clause 126
Section 18 (1)	Repealed
Section 18 (2), main para	Clause 201 (1)
Section 18 (2), Proviso	Clause 201 (3)
Section 18 (2A), earlier part	Omitted, as repeating existing §-18 (2)
Section 18 (2A), latter part	Clause 201 (6)
Section 18 (2B), main para	Clause 201 (2)
Section 18 (2B), Prov., part	Clause 205 (1), part
Section 18 (2B), Prov., Part	Clause 205 (2)
Section 18 (2B) Prov., part (re: order by Income-tax Officer).	Omitted, as unnecessary.
Section 18 (3), main para	Clause 202 (a)
Section 18 (3), Prov.	Clause 205 (1), part
Section 18 (3A), main para	Clause 202 (b)
Section 18 (3A), Prov.	Clause 205 (1), part
Section 18 (3B), main para	Clause 204 (1), main para
Section 18 (3B), 1st Prov.	Clause 205 (1), part
Section 18 (3B), 2nd Prov.	Clause 204 (1), Prov.
Section 18 (3C).	Clause 204 (2)
Section 18 (3D), main para	Clause 203
Section 18 (3D), Prov.	Clause 205 (1), part
Section 18 (4)	Clause 206
Section 18 (5), main para earlier half, part	Clause 207, main para, earlier half.
Section 18 (5), main para, earlier half, part	Clause 246 (1), earlier half
Section 18 (5), main para, latter half, part	Clause 207, main para, latter half part.
Section 18 (5), main para, latter half, part	Clause 246 (1) latter half.
Section 18 (5), 1st Prov	Clause 207, main para, latter half, part.
Section 18 (5), 2nd Prov., part	Clause 207, 1st Prov.
Section 18 (5), 2nd Prov., Part	Clause 246 (1), 1st Prov.
Section 18 (5), 3rd Prov., Part	Clause 207, 2nd Prov.
Section 18 (5), 3rd Prov, part	Clause 246 (1), 2nd Prov.
Section 18 (6)	Clause 208
Section 18 (7)	Clause 209
Section 18 (8)	Clause 210
Section 18 (9)	Clause 211
Section 18, Expl.	Clause 212
Section 18A (1) (a), main para, earlier half, part	Clause 215 (1)
Section 18A (1) (a), main para, earlier half, part	Clause 216
Section 18A (1) (a), main para, earlier half, part	Clause 217 (a), earlier half.
Section 18A (1) (a), main para, earlier half, part	Clause 218 (1).

Section 18A (1) (a), main para, earlier half, part	Clause 218 (2)
Section 18A (1) (a), main para, earlier half, part	Clause 219 (1) main para
Section 18A (1) (a), main para, latter half, part	Clause 217 (4), latter half
Section 18A (1) (a), main para, latter half, part	Clause 217 (2)
Section 18A (1) (a), 1st Prov	Clause 219 (1) Prov
Section 18A (1) (a), 2nd Prov	Clause 217 Expl
Section 18A (1) (a), 3rd Prov	Clause 218 (3)
Section 18A (1) (b)	Clause 219 (2)
Section 18A (2), main para	Clause 220 (1)
Section 18A (2), Prov	Clause 220 (2)
Section 18A (3)	Clause 220 (3)
Section 18A (4)	Clause 221
Section 18A (5), main para part 1st cl (i)	Omitted as spent
Section 18A (5) main para, part	Clause 222 (1), part
Section 18A (5), main para, part	Clause 222 (1), part
Section 18A (5), main para part	Clause 2 (33) 1st definition "regular assessment"
Section 18A (5), 1st Prov	Clause 222 (2)
Section 18A (5), 2nd Prov	Clause 222 (1), part
Section 18A (6), main para	Clause 223 (1), part
Section 18A (6), 1st Prov	Clause 223 (1), part
Section 18A (6), 2nd Prov	Clause 223 (2)
Section 18A (6) 3rd Prov	Clause 223 (3)
Section 18A (6), 4th Prov	Omitted, as the draft proposed for S 18A (6) main para. appli- es the rule contained in the Prov. for all cases.
Section 18A (6), 5th Prov	Clause 223 (4)
Section 18A (7)	Clause 224
Section 18A (8)	Clause 225 (1)
Section 18A (9), main para	Clause 282, earlier half.
Section 18A (9), Proviso	Clause 282, latter half
Section 18A (10)	Clause 226
Section 18A (11)	Clause 227
Section 18A (12)	Clause 228
Section 19	Clause 200 (1)
Section 19A	Clause 166 (4)
Section 20	Clause 167
Section 20A	Clause 166 (1)
Section 21	Clause 166 (2)
Section 22 (1)	Clause 143 (1)
Section 22 (2)	Clause 143 (2)
Section 22 (2A), part	Clause 143 (3)
Section 22 (2A), part	Clause 20
Section 22 (3)	Clause 143 (4)
Section 22 (4)	Clause 146 (1)
Section 22 (5)	Clause 146 (5)
Section 23 (1)	Clause 147 (1)
Section 23 (2)	Clause 147 (2)
Section 23 (3)	Clause 147 (3)
Section 23 (4), main para, earlier half	Clause 148 (1)

Section 23 (4), main para, latter half, part	Clause 193 (2), part
Section 23 (4), main para, latter half, part	Clause 192 (6)
Section 23 (4) , Proviso	Clause 193 (2), part.
Section 23 (5), opening lines	Clause 189 (1), opening lines
Section 23 (5) (a), main para	Clause 189 (1) (i) and (ii)
Section 23 (5) (a), 1st Prov.	Clause 189 (2)
Section 23 (5) (a), 2nd Prov.	Clause 189 (3)
Section 23 (5) (a) 3rd Prov.	Omitted, as unnecessary
Section 23 (5) (b)	Clause 190
Section 23 (6)	Clause 165
Section 23-A—	
Sub-section (1), part	Clause 113 (1)
Sub-section (1), part	Clause 113 (2)
Sub-section (1), part	Clause 118
Sub-section (2)	Clause 114
Sub-sections (3) to (7)	Repealed
Sub-section (8)	Clause 115
Sub-section (9)	Clause 116

Explanation 1—

Clause (a)	Clause 117(1), part
Clause (b)(i), main para	Clause 117(1), part
Clause (b)(i), Proviso	Clause 95(1), part
Clause (b)(ii)	Clause 117(1), part
Clause (b)(iii), main para, earlier half	Clause 117(1), part
Clause (b)(iii), main para, latter half, part	Clause 117(2), main para
Clause (b)(iii), main para, latter half, part	Clause 117(2), Explanation
Clause (b)(iii), Proviso	Clause 95(2), Proviso

Explanation 2—

	Clause 120
Section 23B(1), earlier part	Clause 145(1)
Section 23B(1), latter part	Clause 145(2)
Section 23B(2)	Clause 145(3)
Section 23B(3)	Clause 145(4), part
Section 23B(4)	Clause 145(7)
Section 23B(5)	Clause 244
Section 23B(6)	Clause 245
Section 23B(7)	Clause 145(5)
Section 23B(8)	Clause 145(6)

Section 24(1)—

main para	Clause 73(1)
1st Proviso	Clause 74(1)
2nd Proviso, earlier half	Clause 78(1)
2nd Proviso, latter half	Clause 76(1)
Expl. 1	Clause 28, Expl. 2
Expl. 2	Clause 42(6)

Section 24 (2)—

main para, part	Clause 73(2)
main para, part	Clause 73(4)
main para, part	Clause 74(2)
main para, part	Clause 74(4)

Section 18A (1) (a), main para, earlier half, part	Clause 218 (2)
Section 18A (1) (a), main para, earlier half, part	Clause 219 (1), main para
Section 18A (1) (a), main para, latter half, part	Clause 217 (a), latter half
Section 18A (1) (a), main para, latter half, part	Clause 217 (e)
Section 18A (1) (a), 1st Prov	Clause 219 (1) Prov
Section 18A (1) (a), 2nd Prov	Clause 217 Expl
Section 18A (1) (a), 3rd Prov	Clause 218 (3)
Section 18A (1) (b)	Clause 219 (2)
Section 18A (2), main para	Clause 220 (1)
Section 18A (2), Prov	Clause 220 (2)
Section 18A (3)	Clause 220 (3)
Section 18A (4)	Clause 221
Section 18A (5), main para part 1 & cl (1)	Omitted, as spent
Section 18A (5) main para part	Clause 222 (1), part
Section 18A (5), main para, part	Clause 222 (1) part
Section 18A (5), main para, part	Clause 2 (33) 1st definition 'regular assessment'
Section 18A (5) 1st Prov	Clause 222 (2)
Section 18A (5), 2nd Prov	Clause 222 (1), part
Section 18A (6), main para	Clause 223 (1), part
Section 18A (6), 1st Prov	Clause 223 (1), part
Section 18A (6) 2nd Prov	Clause 223 (2)
Section 18A (6), 3rd Prov	Clause 223 (3)
Section 18A (6), 4th Prov	Omitted as the draft proposed for S 18A (6) main para. applies the rule contained in the Prov for all cases
Section 18A (6) 5th Prov	Clause 223 (4)
Section 18A (7)	Clause 224
Section 18A (8)	Clause 225 (1)
Section 18A (9) main para	Clause 282, earlier half
Section 18A (9), Prov 150	Clause 282, latter half
Section 18A (10)	Clause 226
Section 18A (11)	Clause 227
Section 18A (12)	Clause 228
Section 19	Clause 200 (1)
Section 19A	Clause 166 (4)
Section 20	Clause 167
Section 20A	Clause 166 (1)
Section 21	Clause 166 (2)
Section 22 (1)	Clause 143 (1)
Section 22 (2)	Clause 143 (2)
Section 22 (2A), part	Clause 143 (3)
Section 22 (2A) part	Clause 80
Section 22 (3)	Clause 143 (4)
Section 22 (4)	Clause 146 (1)
Section 22 (5)	Clause 146 (5)
Section 23 (1)	Clause 147 (1)
Section 23 (2)	Clause 147 (2)
Section 23 (3)	Clause 147 (3)
Section 23 (4), main para, earlier half	Clause 148 (1)

Section 23 (4), main para, latter half, part	Clause 193 (2), part
Section 23 (4), main para, latter half, part	Clause 192 (6)
Section 23 (4) , Proviso	Clause 193 (2), part.
Section 23 (5), opening lines	Clause 189 (1), opening lines
Section 23 (5) (a), main para	Clause 189 (1) (i) and (ii)
Section 23 (5) (a), 1st Prov.	Clause 189 (2)
Section 23 (5) (a), 2nd Prov.	Clause 189 (3)
Section 23 (5) (a) 3rd Prov.	Omitted, as unnecessary
Section 23 (5) (b)	Clause 190
Section 23 (6)	Clause 165
Section 23-A—	
Sub-section (1), part	Clause 113 (1)
Sub-section (1), part	Clause 113 (2)
Sub-section (1), part	Clause 118
Sub-section (2)	Clause 114
Sub-sections (3) to (7)	Repealed
Sub-section (8)	Clause 115
Sub-section (9)	Clause 116

Explanation 1—

Clause (a)	Clause 117(1), part
Clause (b)(i), main para	Clause 117(1), part
Clause (b)(i), Proviso	Clause 95(1), part
Clause (b)(ii)	Clause 117(1), part
Clause (b)(iii), main para, earlier half	Clause 117(1), part
Clause (b)(iii), main para, latter half, part	Clause 117(2), main para
Clause (b)(iii), main para, latter half, part	Clause 117(2), Explanation
Clause (b)(iii), Proviso	Clause 95(2), Proviso

Explanation 2—

	Clause 120
Section 23B(1), earlier part	Clause 145(1)
Section 23B(1), latter part	Clause 145(2)
Section 23B(2)	Clause 145(3)
Section 23B(3)	Clause 145(4), part
Section 23B(4)	Clause 145(7)
Section 23B(5)	Clause 244
Section 23B(6)	Clause 245
Section 23B(7)	Clause 145(5)
Section 23B(8)	Clause 145(6)

Section 24(1)—

main para	Clause 73(1)
1st Proviso	Clause 74(1)
2nd Proviso, earlier half	Clause 78(1)
2nd Proviso, latter half	Clause 76(1)
Expl. 1	Clause 28, Expl. 2
Expl. 2	Clause 42(6)

Section 24 (2)—

main para, part	Clause 73(2)
main para, part	Clause 73(4)
main para, part	Clause 74(2)
main para, part	Clause 74(4)

<i>Proviso (a)</i>	Repealed
<i>Proviso (b) part</i>	Clause 73(3) part
<i>Prov so (b) part</i>	Clause 74(3) part
<i>Proviso (c) earl er part</i>	Clause 76(2)
<i>Proviso (c) la ter part</i>	Clause 73(2)(b)
<i>Proviso (d)</i>	Clause 77
<i>Prov so (e)</i>	Clause 79
<i>Prov so (f)</i>	Omitted as obsolete
<i>Sect on 24 (2A)</i>	Clause 75(1)
<i>Sect on 24 (2B)</i>	
<i>part</i>	Clause 75(2)
<i>part</i>	Clause 75(3)
<i>Sect on 24(3)</i>	Clause 164
<i>Section 24A(1) main para earl er half</i>	Clause 184(1)
<i>Sect on 24A(1) main para latter half part</i>	Clause 184(2)
<i>Sect on 24A(1) ma n para latter half part</i>	Clause 184(3)
<i>Section 24A(1) Prov</i>	Omitted as unnecessary in the draft as framed.
<i>Sect on 24A(2)</i>	Clause 184(4)
<i>Sect on 24B(1) part</i>	Clause 168(1) part.
<i>Sect on 24B(1) part</i>	Clause 168(6)
<i>Sect on 24B(1) part</i>	Clause 168(5)
<i>Sect on 24B 2)</i>	Clause 168(2) part
<i>Section 24B(3)</i>	Clause 168(2) part
<i>Sect on 25(1) part</i>	Clause 185(1)
<i>Sect on 25(1) part *</i>	Clause 185(4)
<i>Sect on 25(2) earl er part</i>	Clause 185(3)
<i>Sect on 25(2) la ter part</i>	Clause 281
<i>Sect on 25(3) part</i>	Clause 13(1)
<i>Sect on 25(3) part (appl cable to ncome-tax)</i>	Clause 91(2) part
<i>Sect on 25(4) part</i>	Clause 13(2)
<i>Sect on 25(4) part (appl cable to ncome-tax)</i>	Clause 91(1) part.
<i>Section 25(4) Proviso (a)</i>	Clause 100
<i>Sect on 25(4) Prov so(b)</i>	Clause 13(3)
<i>Sect on 25(5)</i>	Clause 91(2)
<i>Sect on 25(6)</i>	Clause 322
<i>Section 25A(1) main para earl er part</i>	Clause 181(2) part
<i>Section 25A(1) ma n para latter part</i>	Clause 181(3)
<i>Sect on 25A(1) Proviso</i>	Clause 181(2) part
<i>Sect on 25A(2) main para part</i>	Clause 180(4)
<i>Sect on 25A(2) main para part</i>	Clause 181(4) (a)
<i>Sect on 25A(2) main para part</i>	Clause 181(4) (b) part
<i>Sect on 25A(2) main para part</i>	Clause 181(6)
<i>Sect on 25A(2) Prov</i>	Clause 181(4) (b) part.
<i>Sect on 25A(3)</i>	Clause 181(1)
<i>Sect on 26(1)</i>	Clause 194(1)
<i>Section 26(2) main para</i>	Clause 180(1)
<i>Section 26(2) Prov earl er half</i>	Clause 180(2)
<i>Section 26(2) Prov lat er half</i>	Clause 180(3)
<i>Section 26A(1)</i>	Clause 191(1)

Section 26A(2), part	Clause 191(3).
Section 26A(2), part	Clause 191(4).
Section 26A(2), part	Clause 191(5).
Section 26A(2), part	Clause 191 (6).
Section 26A(2), part	Clause 192(1).
Section 27	Clause 151.
Section 28(1), main para	Clause 280(1).
Section 28(1), Prov. (a)	Clause 280(3)(a).
Section 28(1), Prov. (b)	Clause 280(3)(b).
Section 28(1), Prov.(c)	Clause 280(3)(c).
Section 28(1), Prov.(d)	Clause 280(2).
Section 28(2)	Clause 280(4).
Section 28(3)	Clause 283(1).
Section 28(4)	Clause 284.
Section 28(5)	Clause 283(3).
Section 28(6)	Clause 283(2).
Section 29	Clause 163.
Section 30(1), main para	Clause 254.
Section 30(1), 1st Proviso	Omitted, as under the draft proposed for existing section 46(1), penal interest runs without any specific order by the Income-tax Officer.
Section 30(1), 2nd Proviso	Clause 255.
Section 30(1), 3rd Proviso	Omitted, in view of section 23 A as amended upto date.
Section 30(1A)	Clause 256.
Section 30(2), part	Clause 257(2).
Section 30(2), part	Clause 257(3).
Section 30(3)	Clause 257(1).
Section 31(1), earlier part	Clause 258(1).
Section 31(1), latter part	Clause 258(3).
Section 31(2)	Clause 258(4).
Section 31(2A)	Clause 258(5).
Section 31(3), opening lines	Clause 259, opening lines.
Section 31(3), main para, clause(a)	Clause 259(1)(a), part.
Section 31(3), main para, clause(b)	Clause 259(1) (a), part.
Section 31(3), main para, clauses (c), (d) and (e)	Clause 259(1)(c), part.
Section 31(3), main para, clause (f)	Clause 259(1)(b).
Section 31(3), main para, clauses (g) and (h)	Clause 259(1)(c), part.
Section 31(3), 1st proviso	Clause 259(2).
Section 31(3), 2nd proviso	Clause 258(2).
Section 31(4)	Clause 275, part.
Section 31(5)	Clause 258(7).
Section 32	Repealed.
Section 33(1), part	Clause 260(1), opening lines.
Section 33(1), part	Clause 260(1)(a).
Section 33(1), part	Clause 260(1)(b).
Section 33(1), part	Clause 261(1), part.
Section 33(2), earlier part	Clause 260(2).
Section 33(2), latter part	Clause 261(1), part.
Section 33(2A)	Clause 261(2), part.

Sect on 33(3) *	Clause 251 part.
Sect on 33(4)	Om itted.
Sect on 33(5)	Clause 275 part
Sect on 33(6)	Om itted.
Sect on 33A(1) ma n para	Clause 272(1) part.
Sect on 33A(1) pro so(a) part	Clause 272(5)(a) part.
Sect on 33A(1) prov so (a) part	Clause 271(5)(b) part
Sect on 33A(1) prov so (b) part	Clause 272(5) (c) part.
Sect on 33A(1) prov so (b) part	Clause 272(5) (d) part
Sect on 33A(1) prov so (c)	Clause 272(3)
Section 33A(2) main para part	Clause 272(1) part
Sect on 33A(2) ma n para part	Clause 272(4)
Sect on 33A(2) 1st prov so (a) part	Clause 272(5)(a) part
Sect on 33A(2) 1st prov so (a) part	Clause 272(5) (b) part
Sect on 33A(2) 1st prov so(b)	Clause 272(5) (c) part
Sect on 33A(2) 1st prov so(c)	Clause 272(5)(d) part
Sect on 33A(2) 2nd prov so	Clause 272 Explanat on 1
Sect on 33A(2) Explanat on	Clause 272 Explanat on 2
Sect on 33A(3)	Clause 272 (6)
Sect on 33B(1)	Clause 271(1)
Sect on 33B(2)	Clause 271 (2)
Sect on 33B(3) part	Clause 260 (1) (d)
Sect on 33B(3) part	Clause 261 (1) part
Sect on 33B(4) part	Clause 262 part
Sect on 33B(4) part	Om itted
Sect on 34(1) 1st para clause (a) part	Clause 152 (a)
Sect on 34(1) 1st para, clause (a) part	Clause 153 part
Sect on 34(1) 1st para clause (b) part	Clause 152 (b)
Sect on 34(1) 1st para clause (b) part	Clause 153 part.
Sect on 34(1) 2nd para part	Clause 152 paragraph below sub-clause (b)
Sect on 34(1) 2nd para part	Clause 154(1)
Sect on 34(1) 2nd para part	Clause 155 (1) open ng lines and para (a) open ng lines.
Sect on 34(1) 2nd para part	Clause 155(1) (b)
Sect on 34(1) 1st prov so clause (i)	Om itted as obsolete
Sect on 34(1) 1st proviso clause () earlier half	Clause 155(1) (a) (1)
Sect on 34(1) 1st prov so clause () la er half part	Clause 155 (1) (a) (a)
Sect on 34(1) 1st prov so clause (i) latter half part.	Clause 155 (1) (a) (i)
Sect on 34(1) 1st prov so clause () part	Clause 154(2)
Sect on 34(1) 1st prov so clause () part	Clause 157(1)
Sect on 34(1) 1st prov so clause () part	Clause 157(2)
Sect on 34(1) 2nd proviso	Clause 152(2)
Sect on 34(1) 3rd prov so	Clause 158(1)
Sect on 34(1) Explana on	Clause 152 Explana on
Sect on 34(1A)	Om itted as obsolete
Sect on 34 (1B)	Om itted as not appl cable fo future years
Sect on 34(C)	Om itted as not appl cable fo

Section 34(1D)	Omitted, as not applicable for future years.
Section 34(2)	Clause 158(2).
Section 34(3), main para, part	Clause 160 (1) (a).
Section 34(3), main para, part	Clause 160 (2) (b) (i).
Section 34(3), main para, part [relating to assessment under section 34(1) (a)]	Replaced by clause 160 (2) (a).
Section 34(3), 1st proviso	Clause 160 (2) (b) (ii).
Section 34(3), 2nd proviso, earlier half	Clause 160 (3) (i).
Section 34(3), 2nd proviso, latter half, part	Clause 156.
Section 34(3), 2nd proviso, latter half, part	Clause 160 (3) (ii).
Section 35(1), main para, part	Clause 161 (1) (a) and (b).
Section 35(1), main para, part	Clause 161 (1) (c).
Section 35(1), main para, part	Clause 161 (2).
Section 35(1), main para, part	Clause 161 (7).
Section 35(1), 1st Prov.	Clause 161 (3).
Section 35(1), 2nd Proviso	Omitted, as not applicable for future assessment years.
Section 35(2)	Omitted, as the Tribunal is proposed to be abolished.
Section 35(3)	Clause 161 (5).
Section 35(4)	Clause 161(6).
Section 35(5)	Clause 162(1).
Section 35 (6)	Omitted, as not applicable for future assessment years.
Section 35(7)	Omitted, as not applicable for future assessment years.
Section 35(8)	Clause 162(3).
Section 35(9)	Clause 162(4).
Section 35(10)	Omitted, as not applicable for future assessment years.
Section 35 (11) (See Finance Act, 1958)	Clause 162(5).
Section 36	Repealed.
Section 37(1)	Clause 136(1).
Section 37(2)	Clause 137.
Section 37(3)	Clause 136(2).
Section 37(4)	Clause 136(5).
Section 38	Clause 138.
Section 39	Clause 139.
Section 40 (1), part	Clause 169 (1) (ii).
Section 40(1), part	Clause 170 (1) part.
Section 40(1), part	Clause 170(1), part.
Section 40(2)	Clause 173(1) (d).
Section 41 (1), main para, part	Clause 169 (1) (iii).
Section 41 (1), main para, part	Clause 169 (1) (iv).
Section 41 (1), main para, part	Clause 170(1), part.
Section 41(1), main para, part	Clause 170 (1), part.
Section 41(1), 1st Prov., earlier half, part	Clause 174, opening part.
Section 41(1), 1st Prov., earlier half, part	Clause 174(a), part.
Section 41(1), 1st Prov., latter half	Clause 174(a), part.
Section 41(1), 2nd Prov.	Clause 175.
Section 41(2)	Clause 177, part.

Section 42(1), main para earlier half
 Section 42(1), main para latter half part
 Section 42(1), main para latter half part
 Section 42(1), main para latter half, part
 Section 42(1), 1st Prov
 Section 42(1), 2nd Prov
 Section 42(1), 3rd Prov
 Section 42(2)
 Section 42(3)
 Section 43 main para
 Section 43 1st Prov
 Section 43 2nd Prov
 Section 43 Explanation
 Section 44(1), part (See Finance Act, 1958)

Section 44 (1) part (See Finance Act, 1958)

Section 44(2) Part (See Finance Act 1958)
 Section 44 (2) part (See Finance Act 1958)
 Section 44(3) part (See Finance Act, 1958)
 Section 44(3), part (See Finance Act 1958)
 Section 44(3) part (See Finance Act 1958)
 Section 44(3) part (See Finance Act, 1958)
 Section 44A earlier part
 Section 44A latter part
 Section 44B (1)
 Section 44B (1) earlier half part
 Section 44B (2) earlier half part
 Section 44B (2) latter half
 Section 44B (3), earlier part
 Section 44B(3) latter part
 Section 44C

Section 44D

Sub-section (1), part
 Sub-section (1) part
 Sub-section (2) part
 Sub-section (2) part
 Sub-section (2) part
 Sub-section (3)
 Sub-section (4)
 Sub-section (5)
 Sub-section (6)
 Sub-section (7) (a)
 Sub-section (7) (b)
 Sub-section (7) (c)
 Sub-section (7) (d)
 Sub-section 7 (e)
 Sub-section (8)
 Sub-section (9)

Clause 9(i), main para.
 Clause 169 (1) (i)
 Clause 170 (1), part
 Clause 177, part
 Clause 183
 Clause 171(2)
 Clause 171(3)
 Clause 95
 Clause: 9(i), Expl
 Clause 173(1) (a) (b) (c)
 Clause 173(1), Prov
 Clause 173(2)
 Clause 173(1), Expl
 Clause 186(1) opening lines and sub-clause (a)
 Clause 195(1) opening lines and sub-clause (a)
 Clause 186 (3) part
 Clause 195 (3) part
 Clause 186(1) (d)
 Clause 186(3) part
 Clause 196(1) (b)
 Clause 196(3), part
 Clause 182(1)
 Clause 182(8)
 Clause 182(3)
 Clause 182(4) part
 Clause 182(5)
 Clause 182(2)
 Clause 182(4) part
 Clause 182(6)
 Clause 182(7)

Clause 96(1) (a)
 Clause 96(6) (f), part
 Clause 96(1) (b)
 Clause 96(6) (c)
 Clause 96 (6) (f), part
 Clause 96(2)
 Clause 96(5)
 Clause 96(4)
 Clause 96(5)
 Clause 96(6) (a)
 Clause 96(6) (b)
 Omitted in view of S 23A as amended upto date
 Clause 96(6) (d)
 Clause 96(6) (e)
 Clause 96(7)
 Clause 96(8)

Section 44E—

Sub-section (1)	Clause 97 (1).
Sub-section (2)	Clause 97 (2).
Sub-section (3)	Clause 97 (5).
Sub-section (4)	Clause 97 (6).
Sub-section (5)	Clause 97 (8).
Sub-section (6)	Clauses 97 (7) and 279.

Section 44F—

Sub-section (1)	Clause 97(3), part.
Sub-section (2)	Clause 97(3), part.
Sub-section (3), main para	Clause 97(3), part.
Sub-section (3), proviso	Clause 97(4).
Sub-section (4)	Omitted.
Sub-section (5)	Omitted.
Sub-section (6)	Omitted.
Section 45, main para, part	Clause 229 (1).
Section 45, main para, part	Clause 229 (3).
Section 45, 1st Prov. (printed with the main para)	Clause 229 (5).
Section 45, 2nd Prov.	Clause 229 (6).
Section 45, Expl.	Clause 229, Expl.
Section 46(1)	Clause 230.
Section 46(1A)	Omitted, as under the draft for 246(1) as proposed, penalty (interest) runs without any order.

Section 46(2)	Clause 230(1).
Section 46(3) & (4)	Clause 235(5).
Section 46(5)	Clause 235(2).
Section 46(5A), 1st paragraph part	Clause 235(3)(i).
Section 46(5A), 1st paragraph, part	Clause 235(3)(ii).
Section 46(5A), 2nd paragraph	Clause 235(3)(iv).
Section 46(5A), 3rd paragraph	Clause 253 (3) (v).
Section 46(5A), 4th paragraph	Clause 235(3)(vi).
Section 46(5A), 5th paragraph	Clause 235(3)(vii).
Section 46(5A), 6th paragraph	Clause 235(3)(iii).
Section 46(6)	Clause 236.
Section 46(7), main paragraph	Clause 242, main para.
Section 46(7), 1st Prov.	Clause 242, Prov.
Section 46(7), 2nd Prov.	Omitted. See 1st Prov. as proposed.
Section 46(7), Explanation, earlier half	Clause 242, Explanation.
Section 46(7), Explanation, latter half, part	Clause 231(2).
Section 46(7), Explanation, latter half, part	Clause 235(1).
Section 46(7), Explanation, latter half, part	Clause 243.
Section 46(8)	Clause 237.
Section 46(9)	Clause 238.
Section 46(10)	Clause 239.
Section 46A(1)	Clause 241(1).
Section 46A(2), main paragraph	Clause 241(2).
Section 46A(2), Explanation	Clause 241, Explanation

Section 46A(3)
 Section 46A(4)
 Section 47
 Section 48(1)
 Section 48(2)
 Section 48(3)
 Section 48(4)
 Section 48A
 Section 49
 Section 49A
 Section 49AA
 Section 49B(1) part
 Section 49B(1) part
 Section 49B(2)
 Section 49C
 Section 49D—
 Sub-section (1)
 Sub-section (2)
 Sub-section (3)
 Sub-section (4)
 Explanation
 Section 49E
 Section 49F
 Section 50 main paragraph
 Section 50 1st Prov
 Section 50 and Prov
 Section 50A
 Section 51 opening lines
 Section 51(a)
 Section 51(b)
 Section 51(c)
 Section 51(d)
 Section 51(e)
 Section 51 last part
 Section 52
 Section 53
 Section 54(1)
 Section 54(2) earlier part
 Section 54(2) latter part

Section 54(3)—

Clause (a)
 Clause (b)
 Clause (c)
 Clause (d)
 Clause (e)
 Clause (f)
 Clause (g)
 Clause (gg)
 Clause (h)

Clause 241(3)
 Clause 241(6)
 Clause 240
 Clause 247
 Clause 250
 Clause 248(1)
 Clause 251
 Repealed
 Repealed
 Clause 92
 Repealed
 Omitted in view of redraft of
 Section 3
 Clause 246(2)
 Clause 246(3)
 Clause 94

Clause 93(1)
 Omitted, as spent
 Clause 93(2)
 Omitted as spent
 Clause 93 Expl
 Clause 253
 Clause 248(2)
 Clause 249(2)
 Omitted as spent
 Omitted as spent
 Repealed

- Clause 285 opening lines
- Clause 285(d)
- Clause 285(e)
- Clause 285(b)
- Clause 285(c)
- Clause 285(a)
- Clause 285 last part
- Clause 286
- Clause 287
- Clause 141(1)
- Clause 141(2)
- Clause 288(1)

Clause 141(3)(a)
 Clause 141(3)(b)
 Clause 141(3)(d)
 Clause 141(3)(e)
 Clause 141(3)(g)
 Clause 141(3)(h)
 Clause 141(3)(i)
 Clause 141(3)(j)
 Clause 141(3)(k)

Clause (i)	Clause 141(3)(l).
Clause (j)	Clause 141(3)(m).
Clause (k)	Clause 141(3)(o).
Clause (l)	Clause 141(3)(p).
Clause (m)	Clause 141(3)(q).
Clause (n)	Clause 141(3)(r).
Clause (o)	Clause 141(3)(s).
Clause (p)	Clause 141(3)(t).
Section 54(4)	Clause 141(4).
Section 54(5)	Clause 288(2).
Section 55—	
Main paragraph	Clause 98(1), main para.
1st proviso	Clause 98(3).
2nd Proviso	Clause 104.
Section 56	Clause 99.
Section 56A—	
Sub-section (1), opening lines	Clause 108(1), opening lines.
Sub-section (1), Clause (i), part	Clause 108(1)(i).
Sub-section (1), Clause (i), part	Clause 108(3).
Sub-section (1), Clause (ii)	Clause 108(1)(ii).
Sub-section (2)	Clause 108(2).
Section 57	Repealed.
Section 58, Sub-section (1), part	Clause 102(1).
Section 58, Sub-section (1), part	Clause 102(2).
Section 58(2)	Clause 200(2).
Section 58A	Clause 305.
Section 58B(1)	Clause 289(1).
Section 58B(2)	Clause 289(2).
Section 58B(3)	Clause 289(3).
Section 58B(3A)	Clause 289(4).
Section 58B(4)	Clause 301.
Section 58C(1), opening lines	Clause 290, opening lines..
Section 58C(1)(a), main paragraph	Clause 290(a).
Section 58C(1)(a), Proviso.	Clause 291(1).
Section 58C(1)(b), main paragraph	Clause 290(b).
Section 58C(1)(b), Proviso.	Clause 291(2).
Section 58C(1)(c)	Clause 290(c).
Section 58C(1)(d), main paragraph	Clause 290(d).
Section 58C(1)(d), Proviso.	Clause 291(3)(b)
Section 58C(1)(e)	Clause 290(e).
Section 58C(1)(f)	Clause 290(f).
Section 58C(1)(g), earlier part	Clause 290(g).
Section 58C(1)(g), latter part	Clause 291(3)(a).
Section 58C(1)(h)	Clause 290(h)
Section 58C(2)	Clause 292.
Section 58D	Clause 291(4).
Section 58E	Clause 294.
Section 58F	Clause 295.
Section 58G(1), earlier part	Omitted, as covered by draft clauses 11 (13) and 296.
Section 58G(1), latter part	Clause 297(2).

- Section 58G(2)
- Section 58G(3)
- Section 58H
- Section 58I
- Section 58J(1)
- Section 58J(2)
- Section 58J(3)
- Section 58J(4)
- Section 58J(5)
- Section 58K
- Section 58L
- Section 58M
- Section 58N
- Section 58O
- Section 58P, main paragraph
- Section 58P, Proviso
- Section 58Q
- Section 58R, main paragraph part
- Section 58R, main paragraph part
- Sect on 58R, main paragraph part
- Section 58R, 1st Prov
- Sect on 58R, 2nd Prov
- Section 58S(1)
- Section 58S(2)
- Section 58T
- Section 58U
- Section 58V
- Section 59
- Sect on 60(1)
- Section 60(2) for income tax
- Section 60(2) for super tax
- Sect on 60(3)
- Section 60A
- Sect on 61(1) part
- Section 61(1) part
- Sect on 61(1) part
- Section 61(1) part
- Sect on 61(1) part
- Section 61(2)(i)
- Sect on 61(2)(ii)
- Sect on 61(2)(i i)
- Section 61(2)(iii)
- Sect on 61(3) main paragraph part
- Section 61(3) main paragraph, part
- Sect on 61(3) Prov
- Section 62
- Section 63
- Sect on 64(1)
- Clause 296
- Clause 297(1)
- Clause 298
- Clause 300
- Clause 299(1)
- Clause 299(2)
- Clause 299(3)
- Clause 291(5)
- Clause 299(4)
- Clause 302
- Clause 303
- Clause 304
- Clause 318
- Clause 306
- Clause 307(1)
- Clause 307(2)
- Clause 308
- Clause 309
- Clause 310 main paragraph.
- Clause 311, part
- Clause 311 part
- Clause 310 Prov
- Clause 312
- Clause 313
- Clauses 314 and 166(3)
- Clause 315.
- Clause 316
- Clause 329
- Omitted as obsolete See existing S 60(3)
- Clause 90
- Clause 112
- Omitted as inapplicable to future assessment years
- Omitted as not required for future assessment years
- Clause 324(1)
- Clause 324(2) opening lines.
- Clause 324(2)(i)
- Clause 324(2)(ii)
- Clause 324(2)(iii) part
- Clause 324(2)(ii)
- Clause 324(2)(i i)
- Clause 324(2) Expl
- Clause 324(2)(v), part
- Clause 324(3)
- Clause 324(4) main para.
- Clause 324(4) Prov
- Clause 325
- Clause 320
- Clause 135(1)

Section 64(2)	Clause 135(2).
Section 64(3), main paragraph	Clause 135(3), main para.
Section 64(3), 1st Prov.	Clause 135(3), 1st Prov.
Section 64(3), 2nd Prov. earlier part	Clause 135(4)(a)
Section 64(3), 2nd Prov. latter part	Clause 135(4)(b).
Section 64(3), 3rd Prov.	Clause 135(5).
Section 64(4)	Clause 135(6).
Section 64(5)	Clause 135(7).
Section 65	Clause 326.
Section 66(1), main paragraph, part	Clause 261(1), part.
Section 66(1), main paragraph, part	Omitted.
Section 66(1), Prov.	Omitted.
Section 66(2)	Omitted.
Section 66(3)	Omitted.
Section 66(4)	Omitted.
Section 66(5), part	Clause 263.
Section 66(5), part	Clause 265.
Section 66(6)	Clause 266.
Section 66(7), main paragraph	Clause 273, part.
Section 66(7), proviso	Clause 267(2), part.
Section 66(7A)	Clause 261(2), part.
Section 66(8)	Clause 278(a).
Section 66A(1), main paragraph	Clause 264(1).
Section 66A(1), Proviso	Clause 264(2).
Section 66A(2)	Clause 268.
Section 66A(3), main paragraph	Clause 269(1), main para.
Section 66A(3), 1st Proviso, part	Clause 269(1), Prov.
Section 66A(3), 1st Proviso, Part	Clause 273, part.
Section 66A(3), 2nd Prov.	Clause 274.
Section 66A(4)	Clause 269(4).
Section 67	Clause 327.
Section 67A	Clause 276.
Section 67B	Clause 328.
Section 68	Repealed.
<i>Schedule</i>	
Rule 1	Rule 1, First Schedule.
Rule 2	Rule 2, First Schedule.
Rule 3	Rule 3, First Schedule.
Rule 4	Rule 4, First Schedule.
Rule 5(i)	Clause 5(1) (g).
Rule 5(ii)	Rule 7(1)(i), First Schedule.
Rule 5(iii)	Rule 7(1) (iii), First Schedule.
Rule 5(iv)	Rule 7(1) (iv), First Schedule.
Rule 5(v)	Rule 7(1)(ii), First Schedule.
Rule 6, earlier half, part	Rule 5, opening lines, First Schedule.
Rule 6, earlier half, part	Rule 5(b), First Schedule.
Rule 6, latter half	Rule 5(c), First Schedule.
Rule 7	Omitted, as not required. ¹
Rule, 8, para 1	Rule 6(1) First Schedule.
Rule, 8, para 2	Rule 6(2), First Schedule.
Rule 9	Clause 44, part.

¹. It is understood that there are no companies carrying on dividing societies or assessment business.

NOTES ON CLAUSES

CHAPTER I

PRELIMINARY

Notes to clause 1

The word "Indian" has been omitted in consonance with the recommendation made by the Commission in respect of other Acts, and in conformity with recent legislative practice

Notes to clause 2.

The words "unless here is anything repugnant in the subject or context", appearing in existing section 2, have been retained in view of the opening lines of section 3, General Clauses Act, though recent Central Acts use the formula "unless the context otherwise requires".

1 Agricultural income Till recently there was a conflict of judicial opinion regarding the interpretation of the word "agriculture". In the latest pronouncement of the Supreme Court¹, all the decisions have been reviewed and the conflict in the judicial pronouncement resolved. Hence it is not necessary to explain what is meant by "agriculture".

2 Annual value Since existing section 9 has been broken up, in the draft, into various clauses, it appears useful to have this definition pointing to the relevant provision

3 Appellate Assutant Commissioner No change has been made in the existing provision. Only, it has been placed before the definition of 'assessee'.

4 Approved Superannuation fund etc Since these two expressions occur frequently in the Act, a reference has been made to them here

5 Assessee The existing definition of 'assessee' has been replaced in the draft by a more comprehensive definition, so as to include all the possible categories of assessees, i.e., (i) a person who is himself liable to pay the tax on income belonging to him, (ii) a person liable to pay tax on income belonging to another person, and (iii) a person who is deemed under the sections of the Act to be an "assessee" or "assessee in default"

Wherever necessary, drafting changes have been made in the substantive provisions (particularly in the Chapter entitled 'Liability in Special cases') to bring out the result that any person on whom a liability to pay tax etc is imposed by the Act, becomes an assessee. It is hoped that the definition of 'assessee', as drafted, when read with the substantive provisions, will cover all cases of vicarious liability falling under any of the following categories —

- (1) One person's income included in another's total income—vide existing sections 4(2), 16(1)(c), 16(3), 44D, 44E and 44F, as well as section 42(2)

¹ *CIT vs Raja Benoy Kumar Saha Roy* (1957) 32 I T R 466. See also *CIT vs Jyoti Kanna Choudhary*, (1957) 32 I T R 705, and *Kameshwar Singh vs CIT* (1957) 32 I T R 58

- (2) One person liable to be assessed as representing another person under existing sections 40, 41, 42(1). and 44B(3).
- (3) One person ceasing to exist, and thereupon another becoming liable to be assessed for or to pay tax for which the former is liable—*vide* existing sections 24B, 25A, 26(2), Proviso and 44.
- (4) One person liable to pay (without the formality of assessment) tax normally payable by another—*vide* existing sections 18(7) and 46A(2) and (3).
- (5) Cases where procedure for recovery of tax may be applied against one person, (who is not himself the assessee) for tax recoverable from another—*vide* existing section 46(5A) 5th para and also draft Second Schedule, Rule 87.

(Existing section 8, 3rd Proviso and section 58-U need not be specifically dealt with here).

Since the definition of "assessee" is made comprehensive, the words "or other person liable to pay such tax, penalty or interest" occurring in existing section 29 have been omitted in the draft¹. This will remove the difficulty created by a decision of the Madras High Court².

A definition of assessment, as including re-assessment, has been inserted on the lines of the Canadian Income-tax Act³. 6. Assessment.

This is new. Though the Act uses the expression "assessment year" there is no definition of that expression anywhere in the Act. We have, therefore, included a definition which conforms to the existing practice. In the Income-tax Acts of other countries, *e.g.*, Ceylon, there is a definition of 'assessment year'. 7. Assessment year.

This is new. Instead of giving an elaborate formula to arrive at the average rate wherever it becomes necessary, we thought it more convenient and conducive to clarity to add a definition. This is based on sub-section (5) of existing section 17. 8. Average rate of Income-tax.

Mention of earned income relief has not been made in the definition, in view of the fact that the provisions of the Act relating to earned income relief have now become obsolete. Since successive Finance Acts for the last two years have not provided for this relief, it would seem to be the confirmed policy of Government to abolish earned income relief.

This is also a new provision intended to arrive at the average rate of super-tax; (compare the definition of "average rate of income-tax" referred to above). Average rate of supertax.

¹. *Vide* draft clause 163.

². *E. Alfred vs. Addl. I.T.O.*, (1956) 29 I.T.R. 708 See also *Abdul Kasim vs. C.I.T.* (1958) 33 I.T.R. 466.

³. See the (Canadian) Income-tax Act, 1948, Section 139(1)(d).

9 Business

No change has been made in existing section 2(4)

10 Capital
asset.

Item (iii) of the existing definition, which excludes "any land from which the income derived is agricultural income", has been redrafted and replaced by the words "any agricultural land in India". The general scheme of the constitutional provisions relating to taxation is to exclude agricultural land from taxation by the Union, and it would, therefore, be in conformity with that scheme to express this exclusion, not in terms of "agricultural income" but in terms of land. Agricultural land which has been cultivated, say, for 5 years and then remained fallow for 2 or 3 years during which it is sold, would, under the existing definition, attract capital gains tax. This anomaly will now be removed by the proposed redraft.

11 Central
Board of Re-
venue

No change, it corresponds to existing section 2(4B)

12 Commis-
sioner

No change, it corresponds to existing section 2(5)

13 Compa-
ny

There is no substantial change in the draft, which follows the existing definition in section 2(5A)

14 Co-opera-
tive Society

No change, it follows the existing definition in section 2(5B)

15 Director,
Manager,
Managing
Agent.

We have included in the existing definition [sec. 2(8A)] the word "Director" also, and we have substituted for the "Indian Companies Act, 1913", the "Companies Act, 1956". To make the meaning clear, we have also introduced the words "in relation to a company"

16 Director
of Inspec-
tion

No change, it corresponds to existing section 2(6)

17 Dividend

There is no change in the existing definition in section 2(6A), except that we have added another explanation to the effect that the accumulated profits "shall include all profits of the company up to the date of distribution or payment referred to in this clause".

The reason for this alteration is this. In the case of *Girdhar Das and Co Ltd vs CIT*¹, the Bombay High Court observed that in this section, "accumulated profits" have been used in contra-distinction to current profits. In our opinion, the intention of the legislature was to include the current profits also in the definition, and to make this clear we have made the proposed alteration.

18 Earned
income.

We have adopted the existing definition [section 2(6AA)] with the following changes. To make the meaning of clause (b) clear, we have split it up into two clauses and numbered them as (b) and (c). The existing clause (c) is renumbered as clause (d). We have added an explanation to

¹ (1957) 31 I.T.R. 82

overcome the difficulty introduced by the Madras High Court in *Mari Muthu Nadar v. C.I.T.*¹

No change; it follows the existing definition in section 2(6B). 19. Firm, partner and partnership.

We have included in the existing definition other provisions which treat income as deemed income for the purpose of the Act. 20. Income.

The Act uses at several places the lengthy expression "income, profits and gains". To simplify the matter and to avoid repetition, we have included "profits and gains" in the definition of income, and throughout the Act we have used, as far as possible, the word "income". Suggestions have been made that we should give an exhaustive definition of income. It is not possible to do so.

The provision within the brackets in existing sub-clause (iii) (relating to the meaning of "person having substantial interest in a company") has been transposed as an explanation.

Item (vii) of the existing definition of income relates to the profits and gains of insurance business carried on by a mutual insurance association or by a Co-operative Society. What is described as "profits and gains" in this item is, in fact, merely a surplus. The definition simply artificially extends the conception of income so as to cover such surplus. The existing words "computed in accordance with Rule 9 in the Schedule" indicate this clearly, when read with existing rule 2(b) of the Schedule. An attempt has been made to bring out this aspect still more clearly in the draft.²

No change, in the existing definition in section 2(7). 21. Income-tax Officer.

We have revised the definition of 'Indian company', in the light of the Companies Act, 1956, and the abolition of the distinction between Part A and Part B States. The existing position relating to companies registered in the State of Jammu and Kashmir is retained. 22. Indian Company.

No change; it follows existing section 2(6D), and has been placed after "Income-tax Officer". 23. Inspecting Assistant Commissioner.

No change; it follows existing section 2(6E), and has been placed after "Income-tax Officer". 24. Inspector of Income-tax.

¹. (1956) 30 I.T.R. 670. For the corresponding provision in the U. K. Act, see Section 525(1) last para, of the Income-tax Act. 1952.

². For a general discussion of the position regarding mutual insurance associations, see the recent Privy Council case of *English and Scottish Joint Co-operative Wholesale Society Ltd., v. Assam Agricultural Income tax Commissioner*, (1948) 2 A. E. R. 295. See also F. T. I. C. Report, 1948, para. 126, page 54, and compare section 121, Australian Income-tax etc. Act, 1936-1953.

25 Magistrate

Under the existing definition, second-class magistrates specially empowered by the Central Government are also authorised to try offences under Act, and in the State of Jammu and Kashmir the State Government may authorise a Magistrate of the second class to try offences under the Act. We are, however, not in favour of second-class Magistrates trying offences under the Act, and we have therefore, confined the power to first class Magistrates throughout India. Incidentally, this will lead to simplification of the definition and uniformity.

26 Non resident

The Act uses various phrases for a person who is not a resident of India. For the sake of uniformity, the phrase 'non-resident' has been used in the draft wherever practicable, and has been defined here.

27 Person.

The definition of "person" in existing section 2(9) has been amplified.

The existing definition includes (a) Hindu undivided family and (b) a local authority. The General Clauses Act, defines "person" as including a company or association or body of individuals whether incorporated or not. The charging section (section 3) of the Income-tax Act enumerates the units for taxation as 'individual, Hindu undivided family, company, local authority, firm and other association of persons, or the partners of a firm or the members of the association individually'. Section 4 of the Act refers to a "person".

It seems desirable to have a comprehensive definition of the word "person" in the Act so as to cover all entities mentioned in—

(i) the existing definition [s 2(9)],

(ii) the existing charging provisions [sections 3 and 4], and

(iii) the General Clauses Act

The definition has therefore been amplified on the above lines.

28 Prescribed

No change, vide existing section 2(10)

29. Prev. year

The expression is defined separately in clause 5

30. Principal Officer

No change, vide existing section 2(12)

31. Public servant.

No change, vide existing section 2(13)

32. Registered firm.

No change, vide existing section 2(14)

33. Regular assessment

The expression is at present defined only casually in the Act in S 18A(5). Since the expression occurs in some sections, it is desirable to place its definition in this clause

² Section 3(42), General Clauses Act.

³ See also notes to clause 3

The definition refers back to the proposed clause¹ 34. Resident. which reproduces S. 4A with modifications.

The definition is new. Wherever both income-tax and 35. Tax. super-tax are intended to be covered, the simple word "tax" would be sufficient. The substantive provisions in the draft, therefore, use the word "tax" wherever convenient, and it has been defined here.

No change; *vide* existing section 2(15), first para. 36. Total income.

The existing definition in section 2(15) (second para) 37. Total world income. is reproduced with one change. The existing words "except income to which this Act does not apply" are not happy and have been replaced by more appropriate words which bring the wording in line with existing section 4(3).

No change; *vide* existing section 2(16). 38. Unregistered firm.

Existing section 2(14A), defining the expression "tax- 39. Taxable territories. able territories", has been omitted in the draft, as the use of that expression is no longer necessary and can be conveniently replaced by the word "India".²

CHAPTER II

BASIS OF CHARGE

Notes to clause 3.

Sub-clause (1)—

(1) The word "person" has been substituted for the words "individual", "Hindu undivided family" etc. and the definition of "person" is being widened³ for the following reasons :—

(a) As already explained⁴, the combined effect of the definition of "person" in section 2(9) of the Income-tax Act and section 3(42) of the General Clauses Act is that a "person" includes (a) Hindu undivided family; (b) local authority; (c) company; and (d) association or body of individuals whether incorporated or not. No specific mention has been made of corporations other than companies included within category (d).

The problem which has troubled the courts is whether such corporations are within the charging section. It can be met by the suggested amendment by introducing the word "person" in the section. In *Commissioner of Income-tax, Madras vs. Salem District Urban Bank Ltd.*⁵ a co-operative bank was treated as an individual by an

¹. Clause 6.

². As assessments for the period prior to the Commencement of the new Act will continue to be governed by the existing Act, there will be no need to lay down separate periods for the various areas.

³. See notes to clause 2 definition of "person".

⁴. (1940) 8. I.T.R. 269.

artificial interpretation of the word "individual" Similarly, in *Commissioner of Income-tax, Madras vs The Bar Council, Madras*¹, a bar council and in the *Baronetcy case*² a corporation sole, were treated as individuals. It seems desirable to make the position clear.

(b) There is also the problem of private religious trusts in favour of deities or mutts which are treated as artificial juridical person in law, vide existing S 41. The point for consideration is whether it is proper to bring them under 'individual' by a strained construction or whether it would be more appropriate to include them under 'person'. These difficulties can be solved if we adopt the word "person" in S 3, the charging section. It may be noted incidentally that in the existing S 3 it occurs only in the expression 'association of persons'.

(c) All the foreign Acts employ the term 'person' in the charging section and it is better to resolve all doubt about the chargeability of particular classes of persons by using the comprehensive term 'person' in section 3.

(2) The next point for consideration is the difficulty noticed in sustaining the legality of the recovery of the tax on the current income under S 18 and 18A. The charge created under section 3 applies to the income of the previous year, while the provisions of sections 18 and 18A apply to the income of the assessment year also. To meet this difficulty a proviso has been added on the lines of the Ceylon Income-tax Ordinance to cover the provisions of the Act relating to charging the tax in particular cases in respect of income, profit and gains of a period other than the previous year. This will cover S 24A, 25(1) and 44B (3) of the Act, whereby the income of the assessment year itself is made chargeable at the rates prescribed by the Finance Act of the assessment year.

Sub clause (2) is intended to make it clear that there is some kind of liability to pay tax in cases where tax is deductible at source or payable in advance. It seems desirable to make a reference to this obligation to pay tax in advance etc in the charging section itself, so as to bring out more directly a position which is implied in existing sections 18 and 18A.

(3) After the phrase "in respect of the total income of the previous year" the words 'or years as the case may be' have been added. Under the definition of 'previous year' in the existing section 2(11) a person may have separate previous years in respect of each separate source of income. The proposed addition is intended to meet such cases.

¹ (1943) 11 ITR 1

² *Currimbhoy Ibrahim Baronetcy Trust vs CIT*, 5 ITC 484 (Bombay)

³ *Cf CIT vs Saramangurthy* (1946) 14 ITR 185

Notes to clause 4.

(1) The income of residents and non-residents has been dealt with separately for the sake of simplicity and clarity.

(2) The first proviso to S. 4(1) has been omitted, as it concerns the assessment year 1939-40 and is now unnecessary.

(3) The second proviso to S. 4(1) relating to persons not *ordinarily* resident should be omitted, as it is proposed to abolish the category and the exemption granted in respect of such persons¹. If, however, the provision is to be retained, it can be kept as shown in the relevant clause on the subject².

(4) The third proviso to section 4(1) concerning the exemption for unremitted foreign income upto Rs. 4,500 has been transferred to the clause relating to income which does not form part of total income.³

(5) The fourth proviso to S. 4(1) relating to residents who are not resident in two out of three preceding years has also been transferred to that clause.⁴

(6) The fifth proviso to S. 4(1) relating to exemption for foreign income of residents who deposit tax etc., within three months (where the fourth proviso does not apply) has also been transferred to the clause relating to exclusions from total income, after omitting portions which have become obsolete.⁵

(7) The words "by or on behalf of" have been used in respect of foreign income received in India [*vide* draft sub-clause (1), (a), (d), (e), (f) and (g)] to cover cases where the income is received not by the assessee himself but by any other person on his behalf.

(8) Explanation 1 to S. 4(1) has been incorporated in draft sub-clause (3).

(9) Explanation 2 to section 4(1) is transferred to the new clause relating to deemed income⁶.

(10) Explanation 3 to S. 4(1) has also been transferred to that clause⁷.

(11) Explanation 4 to existing S. 4(1) relates to income which accrued in a Part B State or merged territory before the extension of the Income-tax Act thereto and is

¹. *Vide* notes to draft clause 6.

². Draft clause 11 (4) (iv).

³. *Vide* draft Clause 11 (4) (i).

⁴. *Vide* draft Clause 11 (4) (ii).

⁵. *Vide* draft Clause 11 (4) (iii).

⁶. *Vide* draft Clause 9 (ii).

⁷. *Vide* draft Clause 9 (iii).

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¹ (1943) 11 I.T.R.1

² *Curumbhary Ibrahim Baronetcy Trust vs CIT*, 5 I.T.C-484 (Bombay)

³ Cf *CIT vs Savumamurthy* (1946) 14 I.T.R. 185

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². Draft clause 11 (4) (iv).

³. *Vide* draft Clause 11 (4) (i).

⁴. *Vide* draft Clause 11 (4) (ii).

⁵. *Vide* draft Clause 11 (4) (iii).

⁶. *Vide* draft Clause 9 (ii).

⁷. *Vide* draft Clause 9 (iii).

brought into any other part of India after the extension of the Indian Act. These provisions, it appears, have become almost obsolete.

The Explanation provides that profits accruing in a merged territory after 1-4-1933 shall be chargeable under section 4(1) (b) (iii) only if such income is remitted into another part of India other than the merged territory. Para 8 of the Merged States (Taxation Concessions) Order, 1949, enacts that Explanation 4 would not apply if the assessee was not a resident in at least three out of six assessment years viz., 1943-44 to 1948-49. Even in the case of persons who were resident in at least three out of six years, Explanation 4 would not operate, if the income had been assessed under the State law on accrual basis and had also been included in the total income for rate purposes [under section 14(2)(c)]. Thus, Explanation 4 to section 4(1) would apply only in the case of persons who were resident in India in at least three out of six assessment years 1943-44 to 1948-49 and whose income accruing in the State has escaped assessment either in the State or in India.

The Explanation should therefore be omitted. If, however, it is deemed to retain it, it should appear in a simplified form. Draft sub-clause (1), (e), (f) and (g) have been drafted to indicate how the Explanation should be incorporated. The language has however, been altered so as to make the provisions easy of application. The existing Explanation uses the words "taxable territories" and the definition of these words in S 2(14A) does not show in clear words the background in which the special provisions relating to merged territories and Part B States were introduced. The provision has now been so drafted as to relate it to the assessment year with effect from which the Indian Act was extended to merged territories and Part B States. A provision may be inserted in the Miscellaneous Chapter to guard against the possibility of any income being taxed twice—once under the existing Act and again under the provision as proposed.

(12) Existing section 4(2) is transferred to the new clause on deemed income.

(13) Existing section 4(3) forms the subject-matter of a separate clause dealing with income which does not form part of total income.

Notes to clause 5

The definition of "previous year" has been embodied in a separate clause, since it is a lengthy one. No change of substance has been made, but drafting changes have been attempted to achieve simplicity, and to state the position regarding various situations separately. Further, the

¹ Vide draft clause 10

² Vide draft clauses 11, 12 and 13

provision at present contained in Rule 5(i) of the Schedule, regarding insurance business, has been brought here for the sake of comprehensiveness.

Notes to clause 6.

(1) The clause relating to category "not ordinarily resident" has been retained in the draft but is recommended to be omitted in order to simplify the law. This recommendation was made by the Income-tax Investigation Commission¹ and also by the Taxation Enquiry Commission². The only difference in the taxation between a person who is ordinarily resident and not ordinarily resident is relating to the foreign income, and provision for determining the tax on foreign income in the case of a person not ordinarily resident is contained in second proviso to section 4(1). But for this difference, both of them stand on the same footing for the purpose of taxation. The retention of persons not ordinarily resident as a separate category is unnecessary.

(2) The condition for residence in the case of a person who has been in India within the four preceding years has now been somewhat altered so as to require the presence of the person in India for at least thirty days in the previous year. The ambiguity caused by the phrase "otherwise than by an occasional or casual visit" in the existing section 4A(a) (iii) will now be avoided.

(3) Section 4A(a) (iv) of the Act, authorising the Income-tax Officer to treat a person as a resident if he is "satisfied" that the person, having arrived in India during the year, is "likely to remain" for not less than three years, has been omitted, as it gives a vague discretion to the Income-tax Officer. The words "has maintained", in existing section 4A(a) (ii), have been replaced in the draft by the words "causes to be maintained", which express the intention better.

(4) *Draft sub-clause (4).*—This is new and has been inserted to make provision for fixing the residence of "persons" who are not individuals, Hindu undivided families, firms, associations or companies.

(5) *Draft sub-clause (5).*—This is new. In *C.I.T. vs. Savumiamurthy*³, the Madras High Court has held that since there can be a separate previous year for each source of income, the residential status of the person has also to be separately determined with reference to each such source. As this procedure will be cumbersome and entail complica-

¹. *Vide* page 15, para 36, I.T.I.C. Report, 1948.

². *Vide* pages 28-29, T.E.C. Report, 1953-1954, Vol. II, Ch. II.

³. (1946) 14 I.T.R. 185.

tions in practice, the newly added sub-clause provides that a person who is resident for one source of income shall be treated as resident for all such sources¹

(6) *Existing section 4A(c)*, latter part, dealing with the determination of the residence of a company on the basis of its income in India is proposed to be omitted, since such test does not appear to be a proper one (After the draft was prepared the Finance Act 1958, by section 1, has omitted it)

(7) *Draft sub-clause (6)*—Though the category of persons not ordinary resident is recommended for abolition the existing special provisions applicable to such persons are retained in the draft (For example, see section 4(1) 2nd proviso. See also sections 42(2) and 44D, which treat such persons on the same footing as non-residents). These sub clauses will therefore, be useful for the purposes of the provisions just referred to

Existing section 4B (c) which provides that a company firm or other association is ordinarily resident if it is resident, has been omitted in the draft, as unnecessary. The distinction between "ordinarily resident" and "not ordinarily resident" is significant only when there is a possibility of an entity being resident and yet not ordinarily resident. In the absence of anything to the contrary, a resident would have to be regarded as ordinarily resident, and no express provision is necessary for the purpose

Notes to clause 7

According to section 4(1) the chargeable income of every person whether resident or non-resident includes income 'which is deemed to be received' in India in the previous year. There is, however, no enumeration at any one place of these receipts which are deemed to be received in India in the previous year. This clause merely collects together the relevant provisions, without effecting any substantial change in language²

[The deemed income referred to in section 18(4) (tax deducted at source) will be dealt with in the clause corresponding to that section, as it merits special treatment]

Notes to clause 8

It seems desirable that all provisions relating to income "deemed" to be of a particular year, or deemed to be received in a particular year should appear in proximity to each other. Hence a part of section 16(2) has been embodied in this clause. No change of substance has been made

¹ A similar recommendation was made by the Income-tax Investigation Commission (1948) vide its Report, pages 148-149 para 334

² See also notes to draft clause 8

Notes to clause 9

According to section 4(1) the chargeable income of a person whether resident or non-resident includes income, profits and gains which "are deemed to accrue or arise to him in the taxable territories" in the previous year. Income is deemed to accrue or arise under various provisions scattered all over the Act. All these provisions which deal with income which is deemed to accrue or arise in India have now been grouped together.

The changes made are all of a drafting nature, and are intended to remove ambiguity and simplify the expression.

Sub-clause (i).—The words "sale..... of a capital asset in the taxable territories" in the existing section 42(1) are slightly ambiguous, since "in taxable territories" can be read either with "sale" or with "capital asset". To remove this ambiguity, the word "situate" has been added after "capital asset". (It is not necessary to make any such addition in the earlier phrases referring to business connection etc., since the language there does not end itself to any ambiguity.)

The words "that part of the operations", in the existing section 42(3) have been replaced by "the operations", for two reasons; first, the word "that" in the existing section is not happy, since it is not followed by any pronoun, and secondly, the existing words are not in symmetry with the opening words "in the case of.....all the operations".

As to the meaning of the word "operation", see the decision of the Supreme Court, in the *Anglo French Textile Co., vs. C.I.T.*¹

Sub-clause (ii).—An attempt has been made to simplify the language, by omitting unnecessary words such as "if payable in the taxable territories wherever paid". The substance is not affected by the deletion of these words, since the proposition sought to be enacted is only this, that salary earned in India is deemed to accrue or arise in India.

Notes to clause 10.

This embodies S. 4(2). The section is based on a double fiction. While the income of the non-resident husband and is treated as the income of the resident wife, it is also treated as income which is deemed to accrue to her in India.

The provision has been embodied in the draft, with a slight verbal change (see the words "or on her behalf" which have been added to make it comprehensive).

¹ (1953) 23 I. T. R. 101.

CHAPTER III

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

Notes to clause 11

(1) This clause deals with the various kinds of income excluded in computing the total income of an assessee. Simplification has been sought to be achieved by the following devices

- (i) re-arrangement of the various clauses of section 4(3) so as to bring out their common features (e.g. existing section 4(3) (x)(b) section 4(3) (xiv) etc. have been placed in proximity to each other as they deal with income of foreigners or employees of foreign Governments etc.),
- (ii) analysis of the essentials of each clause and their restatement in a form that can be easily followed e.g. vide the draft sub-clause¹ dealing with casual receipts and the draft sub-clause² relating to local authorities,
- (iii) incorporating in the draft clause provisions regarding exclusions from total income at present contained in other sections of the Act³,
- (iv) omission of obsolete provisions
- (v) general simplification of language

(2) Provisions relating to income from property held on trust for religious or charitable purposes and income of religious and/or charitable institutions has been dealt with in a separate section on account of its importance⁴

Income of a business chargeable under the Act of 1918 and discontinued after the commencement of the present Act is under section 25 sub sections (3) and (4) excluded from total income. This has been dealt with in another separate section⁵

(3) The changes made by the Finance Act 1958 have been given effect to at the appropriate places

(4) The changes made are mainly of a drafting nature designed to simplify the expression as explained in para (1) above. The following sub-clauses however deserve special notice as the changes made there are not purely formal —

¹ e.g. vide clause 11 (5) to (9)

² Clause 11 (3)

³ Clause 11 (22)

⁴ e.g. Clause 11 (11) to (14)

⁵ See draft clause 12

⁶ See draft clause 13

Sub-clause (7).—Items (ii) to (v) of this sub-clause correspond to sub-clauses (b) to (e) of section 4(3)(x) of the existing Act. The requirement that the recipient must not be an Indian citizen is contained, at present, only in two sub-clauses of section 4(3)(x). Sub-clauses (b) and (d) relating to Consuls etc., and Trade Commissioners do not mention it. In the draft, however, this has been made applicable to all cases, for the sake of uniformity.

Sub-clause (8).—In the existing section 4(3)(xiv), the exemption is conditional on the stay of the employee of a foreign enterprise for a period not exceeding in the aggregate “ninety days in any year”. The words “any year” are, in the context, vague. It has, therefore, been made clear that the stay should not exceed ninety days in the previous year, and it should not have exceeded ninety days in any financial year prior to the previous year.

There is no reason why this exclusion should be available to Indian citizens. The provision has therefore been altered so as to confine it to foreigners.

Sub-clause (9).—It seems desirable to extend the benefit of this clause to services rendered by a foreigner even before the actual commencement of the business. Explanation¹ is intended to achieve this object.

Sub-clause (15).—“Wholly and necessarily” has been replaced by “wholly and exclusively”; cf. existing section 7(2)(iii) as redrafted.² The object is to liberalise the allowance. See the recommendation of the U.K. Royal Commission on the Taxation of profits and income³.

Sub-clause (17) and (24).—These correspond to certain exemptions enjoyed, at present, under a notification issued under section 60. In view of the importance of the subject-matter of the exemptions, they have been included in the draft sub-clauses.

Exemption for members of Nepalese Forces [Existing clause (xi)].—This has been omitted. There are no Indian State Forces now, and there is no member of the Nepalese Armed Forces now serving in India.

Sub-clause (18).—This item will, of course, have to be omitted if it becomes obsolete by the time the new Act comes into force.

Notes to clause 12.

1. This clause is based on section 4(3)(i) and (ii) of the Act. There are certain anomalies which we have noticed in the existing provision and we have attempted in the proposed draft to put an end to such anomalies as far as possible.

¹ *Vide* also notes to draft clauses 17-17, para 6.

² U. K. Royal Commission on the taxation of profits and income Final Report June, 1955, (Cmd. 9474). page 47, para 140.

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(3) The changes made by the Finance Act 1958 have been given effect to at the appropriate places

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¹ *Vide* also notes to draft clauses 17-17, para 6.

² U. K. Royal Commission on the taxation of profits and income Final Report June, 1955, (Cmd. 9474), page 47, para 140.

2 Before the Amendment Act of 1939, there was in the Act only the provision which corresponds to the existing provision in 4(3) (i), main para The instruction in the Income-tax Manual issued by the authority of the Government of India at that time was, that the word "property" in clause (i) does not bear the restricted meaning that it bears in section 9 of the Act, but includes securities or business or share in a business In view of the recommendations made in the Income-tax Enquiry Report, 1936 (to give statutory effect to this practice, subject to the conditions to be observed by the business) an amendment was introduced by adding clause (via) which was as follows :—

"Any income derived from business carried on on behalf of a religious or charitable institution, when the income is applied solely for the purposes of the institution and

(a) the business is carried on in the course of the carrying out of a primary purpose of the institution, or

(b) the work in connection with the business is mainly carried on by beneficiaries of the institution"

(After the amendment in 1939, the Government changed the instructions in the Manual, expressing the view that in the case of business the conditions laid down in clause (ia) should be fulfilled before exemption could be granted)

3 The meaning of the word "property" in clause (i) was judicially considered and it was held that it includes even business if the business was subject-matter of a trust This was the view taken in *Charitable Gadodia Swadeshi Stores vs C.I.T., Punjab* by the Lahore High Court¹ Dealing with the contention that the word "property" in clause (i) does not include business their Lordships of the Lahore High Court held that the two clauses were intended to apply to different situations and that the word "property" in clause (i) was wide enough to include all kinds of property including business It was also pointed out that clause (ia) dealt with a business conducted by a religious or charitable institution without any reference to trust whatever In an instructive judgment, *Din Mohammad J* in that case also pointed out the distinction between an institution and a trust He held that an institution may be religious or charitable and may still not be held under trust Clause (ia), according to him, does not in any way subtract anything from the subject and provides immunity for a certain kind of business which in the view of the legislature had not already been provided for From this decision it follows that where business which is property within the meaning of clause (i) is impressed with the character of trust, the income from such business is altogether exempt and it is not obligatory that in the case of such business the conditions laid

¹ Page 6 I T Enquiry Report 1936 (also known as Ayers Committee Report)

² (1944) 12 I T R. 385

down in clause (ia) should be fulfilled. (Clause (ia) thus applies to a different situation, namely, where there is an institution and that institution carries on business which is not subject to a trust. In such a case the requisites of the section must be complied with. The income must be applied solely to the purpose of the institution and the charitable or religious institution must also fulfil the conditions in sub-clauses (a) and (b). As to the distinction between an institution and a trust, see also the discussion in a recent Privy Council case,¹ and Gunn's commentary on the Australian Income-tax Act.²)

4. That "property" in clause (i) includes business has been well established not only by a decision of the Judicial Committee³ but also by the latest pronouncement of the Supreme Court in *J. K. Trust Case*⁴. This aspect therefore does not present much difficulty. (The difficulty as to in which set of circumstances clause (ia) applies still remains, though the view in *Gadodia Swadeshi Stores*⁵ case has subsequently been followed and confirmed by the High Courts of Allahabad⁶ and Bombay⁷).

5. In view of the recommendations made by Din. Mohammad J. in *Gadodia's case* and by the Income-tax Investigation Commission [Report (1948) at pages 56-57, paragraph 131] the legislature in 1953 [*vide* the amending Act of 1953 (Act 25 of 1953)] converted clause (via) into a proviso to clause (i), and by subsequent legislation it was made clause (b) of the proviso to clause (i) (*vide* the amending Act of 1955). The object of this legislation was to restrict the operation of clause (i), where the property consisted of business impressed with the character of trust, by applying the limitation imposed by clause (b) of the proviso⁸.

But in carrying out this object, the immunity which was granted under clause (ia), (as it stood before 1953), in the case of business carried on by a religious or charitable institution and not subject to trust, was negated. The linking up of old clause (via) to clause (i) had the effect of taking away the separate exemption granted by clause (ia). In other words, the conversion of clause (ia) into a proviso has led to the opposite result of depriving the benefit (limited though it be), which was intended to be

¹ *Minister of National Revenue vs. Trusts and Guarantees Co. Ltd.* (1932) 4A. E. R. 149 P. C. See also *T. M. G. A. vs. F. C. of T.* [1926] 37 C. L. R. 351 at pp. 360, 361.

² 4th edition, p. 114, para 292.

³ *Tribune case*, (1929) 7 I. T. R. 415 P. C.-56 I. A. 241.

⁴ [1957] 32 I.T.R. 535 (Bombay H. C. on remand [1958] 33 I.T.R. 32).

⁵ (1944) 12 I. T. R. 385.

⁶ *C.I.T. vs. Radhaswami Satsang Sabha.* (1954) 25 I. T. R. 472.

⁷ *J. K. Trust vs. C. I. T.*, (1958) 33 I. T. R. 32.

⁸ *Cf.* Report of the Taxation Enquiry Commission, (1953-1954). Vol. II Ch. VIII, paragraphs 2 and 3, page 105.

conferred by clause (1a) on charitable and religious institutions which carried on business which was not subjected to trust (provided they fulfilled the conditions laid down in paragraphs (a) and (b) of that clause) We think that this result was not intended by the legislature. If the intention is—as undoubtedly it has been from 1936—to impose restrictions in the case of business whether carried on by a trust or by a religious or charitable institution, the intention should be clearly stated in the Act. But the immunity itself need not be taken away. In order to avoid the anomaly the clauses should be so drafted as to bring about the real intention of the legislature, and thus we have done in the proposed draft

6 Incidentally, it may be noted that the legislature really wanted the conditions contained in paragraph (b) of the Proviso to apply not only to cases where business is carried on by the institution, but also where the business was the subject-matter of a trust (i.e., even if there was no institution). This object has also not been properly carried out, and some redrafting is desirable on this point also. On this assumption, it has been made clear in the draft that the restrictions in paragraph (b) of the Proviso will apply to both the cases

7 In short the redraft makes clear the two points that require clarification, namely :—

- (i) Exemption under section 4(3)(i) is (in the case of a business) subject to the conditions given in Proviso (b), irrespective of whether the business is carried on by a trust or an institution
- (ii) The exemption is also available to institutions not subject to trust, (subject to the same conditions)

8 For the sake of clarity, a trust carrying on a business is dealt with separately in draft sub-clause (2), and draft sub-clause (1) is confined to other properties, vide the draft Explanation thereto

9 Besides this important change, the following points may also be noted —

- (a) The phrase “religious or charitable purposes” occurring in the existing Act has been replaced by the phrase “charitable or religious purposes”, to give more prominence to charitable purposes
- (b) The existing section 4(3)(i) opens with the words “subject to the provisions of clause (c) of sub-section (1) of section 16” The limitation expressed by these words has been retained in draft sub-clause (1), but it is to be considered whether there is any sound reason for this limitation. The effect of the words in question seems to be that even in cases of transfer for a charitable purpose the income of the transferred assets is regarded as the

transferor's income.¹ It would be more consistent with the spirit of the law if such income were excluded from total income, at least so long as the income is applied for a charitable purpose. The words "subject to the provisions of clause (c) of sub-section (1) of section 16" deserve to be deleted.

Notes to clause 13.

Section 25, sub-sections (3) and (4) provide for two things. One is the exclusion from total income of income of certain businesses, and the other is the right to claim substitution of the income of the year of discontinuance etc., in place of the last year's income.

The first part (exclusion from total income) has been embodied in the present clause, with the language simplified.²

CHAPTER IV

COMPUTATION OF TOTAL INCOME

Notes to clause 14.

1. This corresponds to section 6 of the present Act. The opening words of the section, have, however, been modified so as to make it clear that the section merely classifies the chargeable income into different heads for the purpose of computation of total income. That section 6 concerns itself with classification and sections 7, 8, 9 etc. with computation is clear from the discussion in *Kothari vs. C.I.T.*³ and in *United Commercial Bank Ltd., vs. C.I.T.*⁴

2. Item (c) relating to "Income from property" has been changed into "Income from House Property". Section 9 is essentially concerned with House Property and the description now adopted will clearly indicate the nature of the head.

Another variation in the present section is the mention of the head "Income from other sources" after the head "Capital gains", indicating that "Income from other sources" continues to be the residuary head as heretofore.

¹ These words were introduced in 1953 in pursuance of the recommendation made by the Income tax Investigation Commission; see its Report (1948), para 1-9, page 6.

² See notes to clause 91 for comments on the retention of existing section 25 (3) and (4).

³ (1951) 20 I.T.R. 79.

⁴ (1957) 32 I.T.R. 688.

Notes to clauses 15 to 17

A—Salaries

Simplification of the present section 7 has been attempted in the following ways.—

- (i) only the substantive provision specifying the charge in respect of "salaries" paid or payable by an employer has been dealt with in the main clause¹
- (ii) the extended meaning given to the expression "salaries" is omitted from the substantive clause and separately defined in the interpretation clause,
- (iii) similarly, instead of mentioning the different types of employers in the substantive part, the term "Employer" alone has been used a definition having been given separately to cover the various types,
- (iv) the permissible deductions are placed in a separate clause,
- (v) the present Explanations about "perquisites" (Explan 1) and "profits in lieu of salary" (Explan 2) have been placed in the interpretation clause

2 Provisions dealing with income classifiable as salary, scattered elsewhere in the Act, have been collected together, e.g., draft clause²—dealing with notional payments from provident funds etc

3 The existing section makes a distinction between salary which is 'due' to an employee and other salary 'paid' which is not due to him. The former is taxable on 'due' basis whether actual payment has been made or not, while the latter is taxable on the basis of actual payment. This aspect is more clearly brought out in the present draft. (See the decision of Calcutta High Court in *Bhuban Mohan Banerjee vs. CIT*³ though in an earlier decision⁴ it was held that an amount due in one year could be taxed in a later year in which it was received)

4 Arrears of salary would, at first sight, appear to be delayed "payments" for amounts which had already accrued "due" in the year or years in which the employee had rendered service. Looked at from this angle, they do not present much difficulty

But the arrears of salary which call for specific treatment are those where services are rendered in a past year but the quantum of payment to be made is not determined till the year of receipt of the amount by the employee in a subsequent year, or where the emoluments of the post are revised or a promotion is made retrospectively. In these cases it will be difficult to include in the regular original assessment the arrears sanctioned and paid subsequently,

¹ Clause 15

² See draft clause 17 (?) (vi) and (vii)

³ (1956) 29 I.T.R. 229, 236

⁴ *Usharani Roy Choudhary*, In re (1912), 10 I.T.R. 199

since in many cases the determination may take years. It would also not be possible to keep the assessment pending until such determination is made. The Departmental practice has been to include such arrears in the total income of the year of receipt. Relief is afforded against the hardship involved in the taxation of the lump-sum by means of an order under section 60, sub-section (2), the effect of which is that the arrears are attributed to the periods to which they should reasonably be related. Assessment in the year of receipt is in accordance with the decision of the Calcutta High Court in *Usha Rani Roy Choudhurani's case*¹.

The recent decision of the Calcutta High Court in *Bhuban Mohan Banerjee's case*,² however, contains observations which may be taken to mean that a salary payment made in a subsequent year would still be taxable only on due basis in the first year. The decision does not create any difficulty if the word "due" is interpreted as relating to the point of time when the amount is actually quantified by the employer. On this view the claim for relief under section 60(2) may not be admissible. But if it is intended that such amounts should be related to the back years and subjected to tax under section 34, difficulty may arise in the initiation of such proceedings because of limitation. It can even be argued that these are not cases of escapement of income, there being no omission or commission by the assessee or by the Department. There will be further difficulty for the employer in the matter of making deduction of tax at source, and some confusion is bound to arise as to whether the tax so deducted at the time of payment should be given credit for the year for which the assessment under section 34 is supposed to be made.

On the whole the present Departmental practice seems to be a reasonable compromise and is fair to the assessee and the Department. It is fair to the Department because the complication of section 34 is avoided, and even when an order under section 60(2) is passed the consequential adjustment of tax is made in that assessment itself and not by reopening past assessments. It is fair to the assessee, because if the amount were to be treated as due only when it is paid, the question of relief under section 60(2) would not arise, while the Departmental practice ensures that the assessee is to be in the same position as if he had been taxed in the respective years after spread-back of the arrears to the relative period.

There may, of course, be cases when the assessee will be worse off by the arrears being related back than when he is taxed on the arrears. This will happen when the arrears of salary are received after retirement or after reversion from a higher post. In those cases the assessee will not apply for relief under section 60(2) and no action is taken by the Department itself under section 34 or otherwise.

¹ (1942) 10 I. T. R. 199.

² (1956) 29 I. T. R. 229, 236.

In view of the position discussed above draft sub-clause (c) has been added to deal adequately with arrears

5 Section 60(2) was placed on the statute book at a time (in the year 1930) when the chargeability of salary was not on "due" basis but on 'receipt' basis, under section 7 as it stood then. Accordingly it continues to employ language appropriate to a higher tax burden in consequence of the employee 'receiving' a payment as salary in arrears or for more than twelve months. This contingency will not arise on the present "due" basis of taxation on salary

It is, however, proposed not to make any changes in that section, since the section will be useful in so far as it gives relief in respect of lump-sum payments received by the employee and treated as profits in lieu of salary under explanation 2 to section 7(1). It may also be useful in view of the fact that a provision for charging arrears not already taxed has been added in the draft

6 A few minor points also deserve notice. These are as follows —

(i) Draft sub-clause 16 (ii) —The provision relating to deduction for entertainment allowance has been made more logical in one respect. Where a person was in receipt of entertainment allowance at a lower rate before 1st April 1955, his claim for deduction will not be totally forfeited, but will be reduced to that previous lower rate. The present section 7(2) (ii) does not make this clear

The changes made by the Finance Act, 1958, have been given effect to

(ii) Draft clause 16 (iv) —The allowance for expenses incurred by an employee in the performance of his duties has been made exclusive not only of entertainment allowance (as at present) but also of the allowance for expenses for books etc and conveyance allowance. The existing provision, section 7(2) (iii) does not include these latter categories. The change has been made in order to make the provision comprehensive

The wording has also been changed so as to make it precise. The word "necessarily" has been omitted as it is unduly restrictive. We have followed the language of existing section 10(2) (xv)

It may also be pointed out that the Royal Commission on the Taxation of Profits and Income (United Kingdom) examined the corresponding provision in the U.K. Act (Schedule E or old Rule 9) and has recommended that the allowance should be made liberal. It has proposed the

¹ Now see the U.K. Income tax Act 1952, Ninth Schedule Rule 7

² Royal Commission on the Taxation of Profits and Income, Final Report, June 1955 (Cmd 9474), Page 47 Para 140

wording "all expenses reasonably incurred for the appropriate performance of the duties of the office or employment". This, the Commission has pointed out, would remove the complaint that the legislature imposes upon those in employment a narrower form of allowance for expenses than it accords to persons deriving a private income from their own efforts. The wording suggested by the Royal Commission is worth consideration as an alternative.

(iii) *Draft clause 17(1)* :—The definition of "employer" as now adopted includes a foreign Government, reference to which is not to be found in the present section 7. It is for consideration whether the mention of foreign Government as employer is acceptable. It has been suggested that by such inclusion the assessee will not be subject to any heavier tax burden but on the other hand may qualify for relief under section 60(2) which will be advantageous to him. The possibility of an employee of a foreign Government being required to make an actual payment of tax (on "due" basis) without actually receiving the salary will not arise, because section 7(1), 2nd proviso, lays down that where tax is deductible at source, the assessee shall not be called upon to pay the tax himself unless he has received salary without deduction. How far the procedure for deduction (section 18) will be enforceable against a foreign Government will also be a matter for consideration.

(iv) *Draft clause 17(2)* :—Item (ii) relating to annuities has provoked some discussion. It has been suggested that annuities paid by the Government or local authorities should be taxed as salary irrespective of whether the payee is an employee or not. This cannot be accepted, as it goes against the basic scheme of the section.

Notes to clauses 18 to 21

The existing section 8 is now covered by four clauses.¹ The first clause relates to the charge, the second relates to deduction, the third relates to deductions in the case of banking companies and the last clause relates to amounts not deductible.

B—Interest
on securities.

Clause 18

The word "receivable" in the present section 8(1) has been interpreted to mean "received".² This decision has been given effect to and the word "received" has been substituted for the word "receivable" in the draft clause to make the intention clear.

Clause 19

This clause and draft clause 21 incorporate the substance of existing section 8, first proviso. The language of

¹ Clauses 18 to 21.

² *Seth Lalbhai Dalpatbhai vs. C. I. T.* (1952) 22 I. T. R. 13. *Thiagaraja Chettiar vs. C. I. T. Madras*, (1953) 24 I. T. R. 593.

the present proviso is involved' A rough analysis will show that it deals with three things :—

- (i) Allowance for realisation expenses and interest on money borrowed for investment,
- (ii) Exception to the allowance at (i) above, in respect of interest payable outside the taxable territories, and
- (iii) Counter-exception to the exception at (ii) above, for interest for which tax is deducted at source or an agent can be appointed under section 43

In the draft, therefore, the proviso has been split up. Item (i) above has been incorporated in this clause, while items (ii) and (iii) have been embodied in a subsequent clause

The provisos to existing section 8, which exclude certain items of expenditure incurred for realising interest etc., do not express the exclusion as "deductions". Since, in the draft, these have been treated as deductions, it is possible that the deductions might in a particular case, exceed the total gross income. In such cases, the excess will be treated as a loss. We do not think that this result should be avoided. Deductions under the head "Interest on securities" should be treated on the same lines as deductions under other heads, if the income is a loss, it should be dealt with as a loss under any other head

Clause 20

This embodies the Explanation to section 8, recast in form so as to make it less complex and state the various aspects distinctly

Clause 21

Item (i) gives effect to the latter part of section 8 first proviso (see notes to the clause relating to deductions, above)

Item (ii) is new. The Madras¹ and Bombay² High Courts have held that expenditure pertaining to interest on tax-free securities is not deductible, while the Nagpur High Court has taken a contrary view in *C. P. and Berar Provincial Co-operative Bank Ltd., vs CIT*³. Effect has been given to the view taken by the Bombay and Madras High Courts

Item (iii) is also new and seeks to make it clear that interest paid on money borrowed for investment in tax-free securities is not deductible

¹ See the criticism in *United Commercial Bank Ltd vs CIT* (1933) 24 I T R 425

² *Madras Provincial Co-operative Bank's case* (1942) 10 I T R 490

³ *Breach Co-operative Bank Ltd vs CIT* (1949) 17 I T R 489

⁴ (1946) 14 I T R 479

Notes to clause 22 to 27

Section 9 of the existing Act has been split up into separate clauses¹. The title of the head has been charged into "Income from house property", because the section deals only with that property and not any other immoveable property. C.—Income from house property.

In the draft, after having stated that the annual value is the basis of chargeability, the expression "annual value" is defined. The basis of computation of annual value in the case of a tenanted building and in the case of owner-occupied building is set out separately². The main drafting changes are the omission of provisos and re-arranging the section on a more logical basis. An interpretation clause has been added.

The detailed changes made in each clause are explained below :—

Clause 22

The head has been changed into "Income from House property" as already explained. In the expression "bona-fide annual value" the words "bona-fide" have been omitted. The section defines only "annual value" and not a "bona-fide annual value". Section 9(2) also uses "annual value" only. Moreover the words "bona-fide" do not in any way make the meaning clearer.

Clause 23

Sub-clause (1) :—The sub-clause corresponds to section 9(2) and no change has been made.

Sub-clause (2) :—This is new. It seems desirable to embody some rules in the Act to furnish guidance in determining the annual value of tenanted property. The draft sub-clause tries to set out the considerations to be borne in mind in such cases. The sub-clause, of course, does not purport to be exhaustive, and refers only to factors of importance.

Sub-clause (3) :—Deals with property occupied by the owner. The first para sets out, in a simple form, the provision contained in section 9(2), first proviso for reduction of the annual value. The form has been changed in order to avoid all ambiguity. The second para corresponds to the last line of section 9(2), first proviso. The existing section provides that the annual value shall not exceed 10 per cent. of the total income of the assessee. Now the total income of the assessee will naturally include income from such occupied property. The calculation of the annual value thus becomes a complicated mathematical problem (see formula below). It will be evident from the formula given below that the annual value so calculated comes to $\frac{6}{55}$ i.e., roughly 11 per cent. of the *other income* of the assessee. The draft, therefore, provides that this 11 per cent. shall be taken as the annual value. No additional liability is saddled on the assessee.

¹ Clauses 22 to 27.

² *Vide* clause 23

The formula referred to above is derived as under —

Suppose AV is the annual letting value of the self-occupied property. Now, according to section 9(2) first proviso, the annual letting value i.e., AV is 10 per cent of the total income, or in other words the total income is ten times the annual letting value. Thus the total income is 10 AV

If Y is the other income of the assessee, then—

$$\text{Total income } 10AV = Y + (AV - AV/6)$$

$$\text{i.e., } 60 AV = 6Y + (6AV - AV)$$

$$\text{i.e., } 60 AV = 6Y + 5AV$$

$$\text{i.e., } 60 AV - 5AV = 6Y$$

$$\text{i.e., } 55 AV = 6Y$$

$$\text{i.e., } AV = 6/55Y$$

$$\text{i.e., } AV = 10 \cdot 9 \text{ per cent of } Y \text{ (roughly 11 per cent)}$$

Sub-clause (4) —This corresponds to section 9(2), 2nd proviso. The following changes have been made—

- (i) the word "occupied" has been replaced by "actually occupied" at all places, since the proviso is meant only for cases where, the property, though occupied, is not actually occupied by the owner,
- (ii) the case where the property remains un-occupied for the whole year and the case where it remains un-occupied for a part of the year have been dealt with as separate items, for the sake of clarity and the formula for computation of annual value in the latter case has been defined in clear language. The existing expression "computed proportionately" sounds abrupt and does not fully express what is intended.

Clause 24

Sub-clause (1), Item (i) —This corresponds to section 9(2), 3rd, proviso. The existing provision is defective in form because it brings about in a roundabout way a result which can be stated directly. The gist of the clause is that in the case of a tenanted property, one half of the municipal taxes should be deducted. This need not be expressed in the form of a "deeming" provision (as s 9(2) 3rd proviso clause (a) appears to do) regarding the tenant's liability followed by a provision (clause (b) of the proviso) for deduction if the tenant's liability is borne by the owner.

The draft seeks to remove this defect. The provision has also been made simpler by removing the reference to the law authorising the levy of tax etc., as unnecessary. It

may be added here that as a general rule, such laws make the tax payable wholly by the owner and not by the tenant.

*Item (ii) :—*The existing section 9(1) (i) has been split up into two parts (a) where the property is occupied by the owner and (b) where it is occupied by the tenant. The two parts have been dealt with separately since in the latter case the annual value has to be reduced by the one half of the deduction for municipal taxes. The expression "reduced annual value", has been, therefore, used for the purpose; it has been explained in the explanation at the end of the clause. It is also made clear that the existing allowance of the one-sixth of income is in respect of repairs.

*Item (iii) :—*The existing provision, section 9(1) (ii), is ambiguous, since the words "not exceeding one sixth of such value" can be read either as applying to the "difference" or to "rent". This has been avoided by splitting up the sub-clause. The Proviso for assessment year 1951-52 has been omitted as spent.

(As to "reduced annual value", see notes under item (ii) above).

*Item (iv) :—*No change has been made in the existing provisions [Section 9(1) (iii)].

*Item (v) :—*Existing section 9(1) (iv), has been split up into four items (v) to (viii) for clarity. The proviso is transferred to a separate clause¹.

*Item (vi) :—*See notes to item (v) above.

*Items (vii) and (viii) :—*See notes to item (v) above.

*Item (ix) :—*No change has been made in the existing section 9(1) (v).

*Item (x) :—*The percentage for collection charges, as prescribed by rules, has been embodied in the Act itself. (As to the expression "reduced annual value" see notes under item (ii) above).

*Item (xi) :—*Verbal changes have been made to improve the language. (As to the expression "reduced annual value" see notes under item (ii) above.)

*Item (xii) :—*This incorporates the substance of the notification providing for deduction of irrecoverable rent.

Explanation :—(See notes under item (ii) above).

*Sub-clause (2) :—*This gives effect to the principle contained in section 9(2), 2nd Proviso, last line, putting it in a more conspicuous form.

¹ Clause 25.

Clause 25

The amounts not deductible have been put in one clause

Clause 26

This clause reproduces the provisions of sub-section (3) of existing section 9 without any change

Clause 27

Sub-clause (i)—reproduces the existing provision in section 9 (4) (a)

Sub-clause (ii)—reproduces the existing provision in section 9(4) (b) with the addition of the words italicised as even a part of a building such as a flat may be allotted on ownership basis, as very often happens in Bombay

Sub-clauses (iii) and (iv)—The definitions of "annual charge" and "capital charge" have been taken from the decision of the Supreme Court in *New Piece Goods Bazar Co., Ltd., Bombay vs C.I.T., Bombay*¹

Sub-clause (v)—gives effect to the change made by the Finance Act, 1938

Notes to clause 28

D-Profits and gains of business etc.

Section 10 of the existing Act, relating to profits and gains of business profession or vocation is cumbersome in form and illogical in arrangement. It is proposed to split up the section, so as to deal separately with the charging provisions, deductions, amounts not deductible, and provisions in the nature of interpretation

The opening clause² deals with the charging provisions and enumerates the various categories of income to be classified as profits and gains of business. In order to make the enumeration exhaustive, the provisions at present contained in section 10(5A) for treating payments received for termination of managing agency or other agency etc as profits and gains of business have been transferred to this clause as sub-clause (ii). For the same reason, the provision in existing section 10(6) regarding income of a trade association rendering services to its members has been transferred to this clause as sub-clause (iu)

Draft Explanation 1 is intended to clarify the position regarding classification of profits of managing agency, and does not mark any departure from the present practice. Draft Explanation 2 incorporates the Explanation 1 to section 24(1) as it should be appropriately placed here

Notes to clause 29

This clause gives the general scheme of arrangement of the sections in the draft dealing with profits and gains of business etc. The object is to give a bird's-eye view of

¹ (1950) 18 I T R. 516 S C.

² Clause 28

the main provisions and to enable the reader to know at a glance how they are arranged. The inspiration for this kind of arrangement is derived from the U. S. Internal Revenue Code.

Notes to clause 30.

This clause deals with deduction for rents, repairs and insurance charges for buildings.

The expression "building used for the business" has been used throughout the whole clause for uniformity (as in the existing Section 10(2) (iv) and (ix), in contrast to "building in which business is carried on" used in section 10 (2) (i) of the existing Act).

Draft Clause (a) (i)—Collects together the deductions allowable for premises used for the business, where the assessee is a tenant.

Cases where only a part of the premises is so used, have been dealt with separately.¹

Draft clause 30(a)(ii)—Deals with the deduction for repairs to a building, where the assessee is not a tenant.

Draft clause 30(b).—Corresponds to section 10(2)(ix), earlier part. Cases where only a part of the premises is used for the business, are dealt with separately.²

Draft clause 30(c)—needs no comments.

Notes to clause 31.

This clause collects together the deductions for repairs, etc., of machinery, plant, etc. and does not need any comments, as the changes made are verbal and consequential on the scheme adopted in the draft.

Notes to clause 32.

Sub-clause (1)—The various allowances in the nature of depreciation have been grouped together in this clause. To simplify the clause and make it brief, the conditions for depreciation allowance have been dealt with in a separate clause³. In the interest of clarity, the various classes of assets have been dealt with separately.

Draft clause 32(1) (i) & (ii)—Together exhaust the first para of existing section 10(2) (vi). The second para of section 10(2)(vi), beginning with "and where....." and ending with the words "cost thereof to the assessee" has been omitted, as its operation is limited to the *year of erection of a building erected* during the assessment years 1945-46 to 1955-56.

¹ See draft clause 38¹ (1).

² See draft clause 38² (2).

³ *Vide* draft clause 34.

As regards the proviso to existing section 10(2)(vi), clauses (a) and (c) of the proviso have been transferred to the draft clause on conditions for depreciation¹.

Clause (b) of the proviso has been transferred to the Chapter on Aggregation of income and Set off of loss, being relevant thereto

Item 32(1) (ii)—See notes under item (i) above

Item 32(1)(iii)—Existing section 10(2) (via) has been simplified as follows :—

(i) The main proviso finds a place in clause (iii) while the second parenthesis (for exclusion of extra allowance for double shift working) has been framed as an Explanation, thus will avoid interruption in reading

(ii) The first parenthesis—containing the words “(which shall be deductible in determining the written down value)” has been omitted. Since clause (via) now forms part of “depreciation”, the allowance will naturally be deducted in determining the written down value under existing section 10(5) (b)

(iii) The time for the allowance—ending on the 31st day of March 1959, has been transferred to the clause relating to conditions for depreciation². If this deduction becomes obsolete by the time the new Act comes into force, it may be deleted

Clause 32(1)(iv)—The propositions embodied in section 10(2)(vii) are these —

- 1 A loss on the sale of an asset is allowed as a deduction. “Loss” here means the difference between the written down value and the sale price when the latter is lower than the former.
- 2 A profit on such sale is counted as income “Profit” here means the excess of the sale price over the written down value (If the sale price exceeds even the original cost, then such excess is a capital gain)
- 3 In the case of asset not sold, but discarded etc., the place of sale price is taken by its scrap value, as increased by insurance moneys, etc., if received.

Of these propositions, No 2 has nothing to do with deductions, and relates to income by way of balancing charge

An attempt has been made to simplify the section so as to embody these propositions in a simple form. Simplification of the section has proceeded on the following lines —

(i) Only the ‘Loss’ aspect has been dealt with here. The profit aspect (2nd 4th and 5th provisos) has been dealt with in a separate clause relating to deemed profits³

¹ Vide draft clause 34 (1) and 34 (2) (iii)

² Vide draft clause 34 (2) (ii) *

³ Vide draft clause 41 (2)

(ii) Unnecessary repetition has been avoided. The 3rd proviso and the main para of section 10(2)(vii) have been combined in the draft in clause 32(1) (iv), since the principle is the same.

Much of the existing 4th proviso repeats parts of the 3rd proviso. The draft clause 32(1) (iv) expresses the principle behind these two provisos in such a manner as to render repetition unnecessary in the draft for the fourth proviso¹.

(iii) Simplicity in expression in general has been attempted. For example, the 3rd proviso at present says that where insurance, etc., moneys are received, then the amount by which the difference between the written down value and the scrap value exceeds the amount of insurance moneys is allowed as a deduction. This merely embodies the simple proposition (*vide* proposition 3rd above), that insurance moneys are added to the scrap value.

Thus—the existing formula is—

Written down value *minus* scrap value *minus* Insurance-Allowed deduction (Shifting “scrap value”, this becomes)

Written down value *minus* (Scrap value+Insurance)= Allowed deduction.

The draft adopts the second formula.

Sub-clause (2)—needs no comments.

Notes to clause 33.

Existing section 10(2)(vib) has been incorporated here. An important change has been made with reference to the year in respect of which the development rebate is to be allowed. The existing section allows it only for the year of acquisition or installation; but it seems desirable to allow the rebate in the next year, if the ship or machinery is actually put to use in the next year.

The proviso to existing section 10(2)(vib) has been transferred to a separate clause relating to conditions for depreciation and development rebate².

The changes made by the Finance Act, 1958, have been given effect to.

Notes to clause 34.

Sub-clause (1)—The provisos to section 10(2) (vi) and section 10(2)(vib) of the existing Act lay down that the deduction under these clauses is to be allowed only if the prescribed particulars are furnished. The draft embodies this requirement and extends it to deductions under existing section 10(2)(via) and 10(2)(vii) also, since these cases should stand on the same footing so far as the point under discussion is concerned.

¹ Draft clause 41(2).

² *Vide* draft clause 34 (3).

Sub-clause (2)—Item (i)—Is new. It embodies a provision contained at present in the rules [vide Rule 8, First and Second Provisos, Indian Income-tax Rules, 1922], as to depreciation for user for part of the year.¹

Item (ii)—Incorporates the limitation contained in the last line of existing section 10(2) (vi) If the deduction itself becomes obsolete, this might have to be deleted.²

Item (iii)—Corresponds to existing section 10(2)(vi), proviso (c), under which the aggregate allowance for depreciation should not exceed the original cost. The existing section applies to the allowances under section 10(2) (vi) and 10(2) (via) only. The draft will cover section 10(2) (vii), also, since it could not have been the intention of the legislature to exclude that allowance from the rule that the aggregate of such allowances should not exceed the original cost.

Item (iv)—Where an asset is sold etc., in the previous year, the allowance under section 10(2)(vii) will be sufficient and there will be no need for an allowance under existing section 10(2)(vi) or 10(2)(via). The draft provision has therefore been added to avoid a double allowance. Since the draft was prepared the Finance Act, 1958, has also incorporated this provision in the Act. But it would seem that "furniture" should not be subject to the restriction embodied in this clause, since existing section 10(2) (vii) does not apply to furniture. The draft retains "furniture" in view of the Finance Act, but the matter requires to be considered.

Sub clause (3)—A part of existing section 10(2) (vib), as amended by the Finance Act, 1958 has been incorporated here. The changes are mostly verbal and consequential, but an important point which requires to be mentioned is, that, the words "and if any such ship, machinery or plant is sold", occurring in the latter half of the proviso to existing section 10(2)(vib) have, in the draft, been taken as applicable to all ships etc., in respect of which development rebate has been obtained, and not confined to the ships etc. to which clause (b) of that proviso applies. This wider interpretation seems in consonance with section 35(11) (as inserted by the Finance Act, 1958) which is applicable to all ships etc.

The provisions contained in existing section 10(2B) and (2C) have been omitted in the draft. It is understood that Government does not want to enforce these provisions for the future, in any case the changes made in existing section 10(2)(vib) render these provisions superfluous, at least so far as development rebate is concerned.

¹ See also last para of notes to clause 38

² See also notes to draft clause 32 (1) (ii)

Notes to clause 35.

Sub-clause (1)—Item (i) needs no comments. Items (ii) and (iii) represent section 10(2)(xiii), which has been broken up for clarity. Item (iv) corresponds to section 10(2)(xiv), relating to allowance for capital expenditure on scientific research. For simplicity, the broad principle for allowing such expenditure as a deduction, embodied in existing section 10(2)(xiv), first para, earlier portion, has been embodied here. The rest of the provisions of section 10(2)(xiv), and its provisos deal with (i) detailed conditions and provisions for deduction, or (ii) rules regarding profit on sale of the asset or (ii) interpretation. These have been dealt with separately.¹

Sub-clause (2)—Item (i) & Explanation.—These correspond to the existing provisions in section 10(2)(xiv), first para and first proviso. An attempt has been made to simplify the expression and make it direct. No change has been made in the substance. As the allowance is granted in both cases (i.e., whether the expenditure was incurred before or after commencement of business), it will suffice to say so, without making separate elaborate provision for the two cases.

The draft Explanation states the first Proviso in a different form, which is positive.

Item (ii)—needs no comment, except that the affirmative provision in existing section 10(2)(xiv), 2nd Proviso (a) (ii), has been made to precede the negative provision in section 10(2)(xiv), 2nd Proviso, (a)(i). The deduction allowed under this item takes the place of the 1/5th in item (i). This is made clear in the draft.

Item (iii)—Language has been simplified.

Item (iv)—Needs no comments.

Item (v)—Corresponds to the earlier portion of section 10(2)(xiv), 2nd Proviso (e). The latter portion has been transferred to the interpretation clause.²

Sub-clause (3)—needs no comments. The contents of the Explanation to section 10(2)(xiv), have been transferred to the interpretation clause.³

Sub-clause (4)—needs no comments.

Notes to clause 36.

Sub-clause (1)—deals with deductions for insurance of stocks and stores.

Sub-clause (2)—Item (i)—needs no comments except that the wording in the existing section 10(2)(x), proviso, has been sought to be improved. The existing phrase, “the

¹ Vide draft clause 35(2) and draft clauses 41(3) and 42(5) respectively.

² Vide draft clause 42(1), Explanation 1.

³ Vide draft clause 42(5).

amount is of a reasonable amount" unnecessarily repeats the word "amount"

Item (ii)—This is new and has been added to help an assessee to get a deduction where bonus is paid in pursuance of any award of an industrial or other tribunal even if the amount is not reasonable, that is to say, even if the conditions in the existing section 10(2)(x), proviso, are not satisfied

Sub-clause (3)—corresponds to existing section 10(2)(iii). The proviso has been transferred to the clause on amounts not deductible¹, in order to simplify the sub-clause and make the arrangement logical

Sub-clause (4)—Section 58R, first para, which pertains to the deduction of the contribution of an employer to an approved superannuation fund, should really find a reference amongst deductions, and has therefore been referred to here

Sub-clause (5)—needs no comments

Sub-clause (6)—corresponds to existing section 10(2)(xi) for bad debts. The changes made are explained below —

Opening lines—Instead of the words "bad and doubtful debts" the words "debts or parts thereof that are established to have become bad debts" have been used. The word "doubtful" is unnecessary and does not add anything to what is conveyed by "bad".

Item (i)—A condition has been added that the debt must have been taken into account in computing the income for an earlier year. This follows section 11(1)(e) of the Canadian Income-tax Act and section 63(1)(a) of the Australian Income-tax Act

Item (ii)—The requirement expressed by the words "not exceeding the amount actually written off" etc appearing at the end of existing section 10(2)(xi), first para, has been given here the shape of a condition

First Proviso—This embodies the latter half of the existing proviso [The earlier half of the existing proviso deals with "profit", not "deduction", and is therefore transferred to a separate clause²]

Second Proviso—is intended to meet a case like this —

A debt is written off in the accounting year 1957-58. At the time of the assessment for that year, the Income-tax Officer does not allow it as a deduction, on the ground that it is not yet established to have become a bad debt. But when the assessment for a subsequent accounting year, say 1958-59, takes place the Income-tax Officer has no doubt

¹ Draft clause 40(a) (i)

² Draft clause 41(4)

left as to its irrecoverability then. The debt will be treated as a bad debt for the account year 1958-59, and the mere fact that it was written off in an earlier year should not bar the grant of a deduction.

This result could have been brought about by suitable words in draft item (ii) also (e.g., by adding "or earlier previous year" there). But a proviso has been preferred in order to avoid obscurity.

Notes to clause 37.

This embodies section 10(2)(xv).

The existing section uses the words "not being an allowance of the nature described" elsewhere; the word "allowance" has, in the draft, been replaced by the word "expenditure" which is more appropriate in the context.

Notes to clause 38.

Sub-clause (1)—The limitation contained in existing section 10(2), Proviso, regarding deduction for rent where a part of the premises is used as a dwelling house, has been incorporated here in para (a). Similar limitation regarding deduction for repairs, contained in existing section 10(2)(ii), Proviso, has been embodied in para (b).

In draft para (a), the annual value of the part used for the business has been mentioned, in preference to the annual value of the part used as a dwelling house mentioned in the existing section, as the former seems to be a more direct way of stating the rule.

The words "as the Income-tax Officer may determine" do not occur in the existing section 10(2) (ii), proviso, but have been added in draft para (b) to make the matter clear and to have uniformity (Cf. existing section 10(2)(i), Proviso).

See also notes below under sub-clause (2).

Sub-clause (2).—Existing section 10(2) (ix), provides for deduction for land revenue etc. and says that the deduction is for that "part" of the premises which is used for the business. The provision for deduction has already been dealt with in the draft clause on deductions. The present draft sub-clause deals with the limitation regarding "part".

The provision has been made more elaborate, on the lines of existing section 10(2)(i), Proviso (See notes to sub-clause (1) above).

[Logically speaking, draft sub-clause (1), for section 10(2) (i) and (ii) Proviso (for deduction for rents and repairs where a part of the premises is used as residence) should also be framed on the same lines as draft sub-clause (2). The existing provision on these points is confined to cases where a part is used as a "dwelling house". It does

not deal with a case where the part is used not as a dwelling house but for some other purpose not connected with the business. However, no change has been made in this respect in draft sub-clause (1), in order to avoid any alteration in tax liability.]

Sub-clause (3)—corresponds to existing section 10(3). The word "wholly" has been replaced by the word "exclusively". It has been held¹ that the words "not wholly" mean that the building is not used exclusively for the purposes of the business, but for other purposes also. (These words, the court held, have nothing to do with the period of user during the previous year.) The draft gives effect to this decision.

The section has also been made more elaborate by providing that the Income-tax Officer is to determine the amount with reference to the extent to which the user was for the purpose of the business.

It must have been noticed that the Act does not deal with all cases of partial user in the context of deductions.

User may be partial in point of—

- (i) *Space*, i.e., only a part of the building is used for the business,
- (ii) *purpose*, i.e., only some of the purposes of the user are business purposes, or
- (iii) *duration*, i.e., the building is used only for a part of the previous year.

(Moreover, there may be partiality both in point of space and time, time and duration, and so on.)

The Act deals with (i) and (ii) only, and that too only for certain kinds of deductions. It does not deal in so many words with (iii). The draft also does not go beyond the Act, except that an earlier clause² embodies a provision contained in the rules regarding user which is partial in point of duration.

Notes to clause 39

No change has been made in existing section 32A.

Notes to clause 40

This clause collects together all amounts not deductible in computing the profits and gains of business, etc. The scheme adopted is to proceed from the general to special. Thus rules common to all assessee come first [para (a)], while those applicable to particular kinds of assessee are placed after them.

¹ *C. I. T. vs Daima Cement Ltd* (1945)-13 I.T.R. 415

² See draft clause 34(2) (i).

Para (a)—

Item (i)—An attempt has been made to simplify the language. The last 17 words of the existing section 10(2) (iii) Proviso, relating to interest paid to a partner have been omitted, as para (b) of present draft clause will cover it.

Item (ii)—needs no comments.

Items (iii) & (iv)—need no comments except that slight verbal changes have been made to secure clarity.

Para (b)—Needs no comments.

Para (c)—The words “expenditure or” have been added in item (ii) in order to make it clear that moneys actually spent (by a person having a substantial interest in a company) are also excluded from deductions.

Para (d)—embodies the last line of clauses (a) and (b) of the Explanation to existing section 8. The bar against double deduction of such amounts has been embodied in the draft for that section,¹ but has been repeated here in order to make the list exhaustive.

Notes to clause 41.

There are provisions scattered at various places in section 10, enacting that a certain amount shall be treated as a profit of business and taxed accordingly. An attempt has been made here to collect all of them together.

Sub-clause (1)—Needs no comments.

Sub-clause (2)—is an attempt to state in a simple form the propositions embodied in the second and the fourth provisos to section 10(2)(vii). The second proviso is confined to assets which are sold and bring profits, while the fourth proviso deals with assets which are discarded etc., and bring profits. The draft sub-clause (read with the draft Explanation 1) combines both these cases.

It must, of course, be noted that the existing fourth proviso is highly involved in language, and does not disclose easily the rule that is to be applied. But there can be no doubt that the true rule is this—that if the scrap value plus the amount of insurance moneys etc., exceeds the written down value, then the excess is taxed as a business profit to the extent to which the original cost is not exceeded.

The proviso as drafted is faithful to this rule. Moreover, it avoids the ambiguity arising from the existing words “so much of the excess as does not exceed the difference between the original cost and the written down value less the scrap value”. [The ambiguity arises by

¹ Draft clause 20(ii).

reason of the fact that the word "less" can be read either with (i) excess, or with (ii) difference, or with (iii) written down value]

The following analysis of the fourth proviso is intended to show how each part of the proviso has been dealt with in the proposed draft.

Existing section.	How incorporated
1 "Provided further exceeds the : d difference between the written down value and the scrap value no amount shall be allocated under this clause"	The <i>italicised</i> words are unnecessary, since deduction is allowed only where the written down value is not exceeded (See existing Sec. 10(2) (vii), 3rd Prov)
2 'and so much of the excess shall be 2 deemed to be profits'	Incorporated in the present draft sub-clause (2)
3 "and so much of the excess as does 3 not exceed the difference between the original cost and the written down value less the scrap value"	The true rule behind the <i>italicised</i> words has been incorporated in a simplified form in the present draft sub-clause (2), as already explained in the notes

The function of draft Explanation 1 has been explained above. Draft Explanations 2 and 3 do not need any comments.

Sub-clause (3)—needs no comments. The changes are only verbal. The words "whether during the continuance of the business" have been added in order to clarify the scope of the provision, on the lines of the existing section 10(2)(vii), 2nd Proviso.

Sub-clause (4)—The addition of the words 'or part of debt' is consequential on the draft adopted for the main para of section 10(2)(xi). Other changes are verbal.

Notes to clause 42.

This clause groups together all provisions in the nature of the definition or interpretation, relevant to profits and gains of business etc.

Sub-clause (1)—

First para—needs no comments

Explanation 1—needs no comments

Explanation 2—Existing section 10(5) (c) provides that in the case of an asset acquired by the assessee by gift or inheritance, its written down value shall be the written down value in the case of the previous owner or the market value (whichever is less). The proviso thus appears as a part of the definition of "written down value", but it would be more appropriate to place it as a part of the definition of actual cost. What is intended is the fixation of a notional figure of actual cost and not a notional figure

of written down value as such. The written down value of an asset is an amount that is constantly diminishing, and cannot be frozen at the figure of written down value of the previous owner, as the existing section purports to do. The real object is to invent an "actual cost" (because a person acquiring property by gift and not paying anything for it does not, *actually*, incur any cost).

The provision has therefore been placed as an Explanation under the definition of actual cost, with suitable verbal changes.

Explanation 3: The only change made in existing section 10(5)(a), 1st Proviso, is to add, after the word 'business', the words 'profession or vocation' to make the provision comprehensive. (Cf. existing section 10(5)(a), 2nd Proviso).

Explanation 4: Existing section 10(5)(a), 2nd Proviso, has been transferred to the definition of actual cost, since it pertains to that topic. A few verbal changes have been made to simplify the language.

Explanation 5: This is based on section 12B(1), 2nd Proviso.

Sub-clauses (2) and (3)—need no comments, except that it is made clear that ships are included in "plant".

Sub-clause (4)—is new. The word "received" has been sought to be defined on the lines of the existing definition of "paid" in section 10(5), first para, so as to cover not only cash receipts, but also receipts according to the method of accounting. The definition is, of course, confined to the provisions dealing with profits from business [e.g. section 10(2A)].

Sub-clause (5)—Corresponds to existing section 10(2) (xiv), Explanation.

The only change made is in item (iii)(b), where, at the end, the words "business of that class" have been changed into "all businesses of that class", on the lines of para (a) of the same item.

Sub-clause (6)—needs no comments.

Sub-clause (7), Para (a)—The provisos to existing section 10(5)(a) have been shifted to the definition of "actual cost", for the reasons given above in the notes relating to draft sub-clause (1), Explanations 3 and 4.

Para (b) and Proviso—need no comments.

Explanation 1.—Corresponds to the second proviso to section 10(5)(b). The form has been changed. The existing provision says that in cases of succession to business, the actual cost referred to in the main part (definition of "written down value") shall be the cost to the predecessor in business. The effect of this is, that written down value that would have been adopted in the case of the predecessor

in business will be regarded as the written down value of the asset even in the hands of the successor. This effect has been sought to be brought about more directly in the provision as drafted.

Explanation 2.—is based on section 12B(1), 2nd proviso

Clause (c)—of the existing definition of written down value has been shifted to the definition of "actual cost"—See notes above relating to draft sub-clause (1), *Explanation 3*

Explanation 3—embodies existing section 10(5), *Explanation*, latter half, without any change

Notes to clause 43

This is a new clause. There is some doubt as to whether the residences constructed for employees are buildings used for the purposes of the business or not. The administrative instructions appearing on page 447 of the Income-tax Manual, 10th Edition, are as follows —

"Buildings belonging to the owner of a business and used by him in order to house his employees are buildings used for the purpose of business where the occupation by the employees of property owned by the employer who carried on a business is subservient to and necessary for the performance of their duties. In any other event such buildings would be chargeable under section 9 irrespective of the fact whether any rent is paid by the employees or not."

The instructions which appear to be in accordance with the strict legal position, are sought to be codified by this clause

Notes to clause 44

The provisions regarding insurance business, contained in the existing Schedule, have been placed in the draft First Schedule, but Rule 9 of the existing Schedule has been placed here in view of its importance. [For a definition of "mutual insurance company", see the South African Income-tax Act, 1941, First Schedule, para 2(d)]

Notes to clause 45

General—

Existing section 12B has been split up into several sections in the draft in order to facilitate its understanding. The charging provision comes first, followed by the year of charge and mode of computation of the gains. Detailed provisions for fixing the cost of the asset follow next, and provisions, in the nature of exemption come at the end

Draft clause 45.—The changes made are verbal only. The existing words “the tax shall be payable” have been replaced by the words.....“shall be chargeable to income-tax” as in other sections. The words “save as otherwise provided” have been added merely as a drafting improvement.

The existing reference to the date 31st March, 1956, has been omitted as obsolete.

But it has been made clear that the transaction must have been effected “in the previous year”. Though this might amount to a repetition of a provision already contained in the Act, namely, that income chargeable as capital gains is deemed to be the income of the previous year in which the transaction took place,¹ still such clarification appears to be useful in the main section also.

Notes to clause 46.

This clause fixes the previous year to which the income should be related.

Notes to clause 47.

Existing section 12B(1), 1st proviso, and earlier part of the 2nd proviso, have been combined together. The latter part of the 2nd proviso really appertains to the definitions of “actual cost” and “written down value” and is placed there.

Sub-clause (i)—needs no comments.

Sub-clause (ii)—The existing provision reads “any distribution under a deed of gift”. The term “distribution” may not, it is apprehended, cover a gift to a single donee. It has, therefore, been replaced by “transfer”. The words “deed of” have been omitted, so as to include oral gifts.

Sub-clause (iii)—The existing provision requires that the subsidiary company should be “registered under the Indian Companies Act, 1956”. (Before its amendment in 1956, the wording was “registered under the Indian Companies Act, 1913”.) Obviously, however, the intention is that the subsidiary company should be an “Indian company”. The wording has been changed accordingly. (It may be noted, that the existing wording would, if construed strictly, exclude companies registered under a pre-1956 law, and this narrows down the scope. On the other hand, it would slightly widen the scope by being silent about the registered office being in India—a requirement mentioned expressly in the definition of “Indian company”.)

Notes to clause 48.

Sub-clause (1)—Item (i)—The words “wholly and exclusively” have been substituted for the existing word “solely”. This will secure uniformity in language with analogous provisions, e.g., existing section 10(2)(xv).

¹ See existing section 12B(1), main para, latter half.

Item (u)—Existing section 12B(2)(u) speaks of "the actual cost to the assessee of the capital asset" (with certain inclusions and exclusions) being deducted from the consideration. But there are cases where "actual costs" is replaced by written down value, e.g., see existing section 12B(1), 2nd proviso. In some cases, it is replaced by the fair market value, see section 12B(2), 3rd proviso. Further the amounts to be added to the actual cost (as representing improvements) vary in various cases according to the date of acquisition of the asset etc. In order to cover all these cases, it seems desirable to use some convenient expression to denote the deductible cost. The expression "statutory cost" has been used for the purpose. The manner of arriving at the statutory cost is dealt with separately for the sake of simplicity.

As to the amounts spent on improvements (additions and alterations) they have not been mentioned in the draft in the present clause, but have been dealt with elaborately in the draft clauses to follow,¹ explaining in detail what is "statutory cost" in various situations. The reason is, that the date after which the improvements should have been made will vary in various situations. To take an example where the fair market value of the asset on 1st January, 1954, is substituted under existing section 12B(2), 3rd proviso it is only improvements made after 1st January, 1954 that can be taken into account and it would not suffice to say that improvements made after acquisition by the assessee will be added to the actual cost.

Notes to clause 49

This clause enumerates the various modes by which a person might have acquired a capital asset which he subsequently transfers for consideration. The various modes enumerated in this section are contained in section 12B itself and are grouped in the clause for the purpose of clarity.

In the following clauses² the method of calculating the statutory cost of the capital asset is laid down.

Assets for which depreciation allowance is admissible have been dealt with separately. The rules for depreciable and non depreciable assets differ, e.g., (i) in the case of depreciable assets the written down value is taken as the actual cost in ordinary cases (u) even where the assets are acquired before 1-1-1954 and the market value on that date is substituted subsequent depreciation has to be adjusted in the case of such assets.

Item (iv)(d) of the draft clause uses the words "revocable or irrevocable trust", since there is no reason for differentiating between the two

¹ Vide draft clauses 50-51

Notes to clause 50.

General—

The cost of an asset to be allowed for the purpose of computing capital gains can be described as made up of the following ingredients :—

- (a) The basic amount. This is (i) cost of acquisition or (ii) written down value or (iii) in certain special cases, the fair market value on a certain date.
- (b) Addition for expenditure on improvement to the assets.
- (c) Reduction for depreciation.
- (d) Adjustment for profits assessed or losses deducted under section 10(2)(vii), 3rd and 4th provisos.

Items (c) and (d) are not applicable to non-depreciable assets.

The existing section mentions all these ingredients while dealing with the *normal* situations covered by section 12B (2)(ii) and 2nd proviso, but does not do so when dealing with certain *special* situations. In the draft, however, it has been considered desirable to make the provision for each situation elaborate and to state all the applicable ingredients.

Scheme—

The scheme adopted in the clause is to deal in separate sub-clauses with the mode of statutory cost according to the mode of acquisition. (The modes of acquisition have been classified in a preceding clause).¹

Sub-clause (1)—

Para. (a)—the words “cost of acquisition” have been substituted for the existing words “actual cost”, as being more appropriate. Incidentally, the expression “actual cost” might give rise to the impression that the definition of that expression in section 10(5) is applicable here also.

As to the expression “cost of improvements” see the interpretation clause at the end of this group.

Para. (b)—The existing section creates a slight difficulty in understanding it, because it combines two things in one, namely, (1) where the capital asset became the property of the *assessee* before 1st January, 1954, and (2) where it became the property of the *previous owner* before the 1st January, 1954. The draft separates these two situations and deals with them separately for the sake of clarity.

The existing provision requires that the fair market value should be “proved” to the satisfaction of the Income-tax Officer. This requirement has been omitted, as it is implied in all proceedings before the Income-tax Officer.

¹ See draft clause 49 and notes thereto.

Sub-clause (2) and subsequent sub-clauses—do not need any detailed comments. The various ingredients constituting the statutory cost have been embodied, here

Notes to clause 51.

This relates to the determination of statutory cost of depreciable assets. The expression "adjusted" has been coined as a short expression to convey the profits assessed and losses deducted under existing section 10(2)(vii), 3rd and 4th provisos. It has been defined in the interpretation section pertaining to this group of sections.

We think however, that it would be more convenient to adopt a simple formula for arriving at the actual cost instead of the elaborate provisions now contained. Either the market value on the date of acquisition if acquired before 1-1-1954 or the market value on 1-1-1954 at the option of the assessee may be adopted, whatever be the mode of acquisition. In other cases the market value on the date of acquisition may be taken. Adjustments may be made to arrive at the statutory cost.

Notes to clause 52

The verbal changes made are consequential on the provisions for arriving at the cost of the asset as re-drafted.

Notes to clause 53

This is new

Where a capital asset is given in exchange, the consideration received by the assessee will itself be an asset (i.e., in kind and not in cash). Some rule for estimating the value of such consideration appears to be necessary. The draft clause takes the fair market value of the asset received by the assessee as the basis.

Paragraphs (a) and (b) are intended to deal with cases where the transaction is not a pure exchange of asset, and the assessee receives or gives something (usually money) in addition to the thing received or given in exchange.

Notes to clause 54

This deals with the case where the consideration stated in the deed of sale etc. is low.

An important departure has been made from the existing provision. Existing section 12B(2), 1st proviso applies to cases where the transaction is entered into with a person 'directly or indirectly' connected with the assessee. This does not appear to be necessary and has been omitted.

¹ See notes above "General"

² The elaborate provisions of section 12 B (3) Proviso or provisos for improvements are regarded as inapplicable for depreciable assets

The draft clause has, further, been limited to cases where the actual consideration is not correctly given in the deed. The power should not extend to cases where the consideration, though law, has been correctly recited in the deed.

Notes to clause 55.

The question of transferring this to the chapter on "Exclusions from Total Income" was considered, by us, but we thought it more appropriate to retain it here.

Notes to clause 56.

No change of importance has been made in existing section 12B(4) (b).

Notes to clause 57.

"Adjusted"—Existing section 12B(2), 2nd proviso says that in the case of depreciable assets, the cost of the assets (i.e. the written down value) has to be adjusted by losses deducted or profits assessed under existing section 10(2)(vii), 3rd and 4th provisos. Even in cases where the fair market value on a certain date is substituted, this deduction has to be made.

In order to avoid the necessity of repeating the words "diminished by losses and increased by profits" frequently, the substantive draft clauses¹ for calculating the statutory cost use the short expression "adjusted", and the present clause seeks to define it.

"Cost of improvement".—Existing section 12B(2)(ii) says that the actual cost of an asset shall include expenditure of a capital nature on additions or alterations to the asset. Even in cases where the actual cost is to be replaced by the fair market value as on a certain date, improvements subsequent to that date have to be taken into account.

In order to avoid the necessary of repeating the lengthy expression "expenditure of a capital nature" etc., the substantive draft clauses use the short expression "cost of any improvements", and the present clause seeks to define it.

The existing provision, section 12B(2)(ii), last lines, specifically excludes expenditure deductible under other heads.

Notes to clause 58.

Clause 58

This clause deals with income taxable under the residuary head "Income from other sources". Sub-clause (1) ^{F—Income} embodies the general principle, while sub-clause (2) ^{from other} lists sources. some specific items deserving special mention.

¹. *Vide* draft clauses 50-51.

Sub-clause (1)—The language adopted is in conformity with that adopted in the draft for the other heads (e.g., Salaries). The words 'which may be included in his total income' have been omitted, as unnecessary. Under existing sections 3 and 4 it is only income forming part of 'total income' that is subject to tax. Therefore the words 'which may be included in the total income' are to be read into each section dealing with a head of income, and need not be repeated in every section.

Sub-clause (2)—Item (i) needs no comments.

Items (ii) and (iii) are in form new, but sub-sections (3) and (4) of existing section 12 imply that such income is taxed under the residuary head. This implication has been made express in the draft.

Section 12(1B) is omitted as it is not relevant for assessments to be made hereafter.

Notes to clause 59

Existing section 16(2) provides for two things —

(1) The proposition contained in the earlier portion, providing that a dividend is deemed to be the income of the previous year in which it is paid, credited etc.

(2) The provision for grossing up of dividends contained in the latter part and proviso.

The proposition at No (1) above has been embodied in a separate draft clause,* being one of the clauses dealing with deemed incomes.

The provision at No (2) above forms the subject-matter of the present draft clause.

Sub-clause (1)—is introductory in nature.

Sub-clause (2)—The grossing up of dividends is a difficult procedure. The question of requiring companies to deduct tax from dividends can be considered, on the lines of S 184-186 of the U K. Act and sections 43 and 49 of the Ceylon Act. The recommendations of the Taxation Enquiry Commission on the subject* may also be seen.

On the assumption that the present provision is to be retained sub-clause (2) attempts to state the rule regarding grossing up in the form of a formula. The existing section states the rule in an indirect manner, the wording 'such amount as would if income-tax etc were deducted therefrom, be equal to the amount of the dividend' creates some difficulty in actual application because it begins with an unknown. The draft formula though appearing complex on account of symbols is not so difficult to apply.

* Vide draft clause 8.

* T. E. C. Report, Vol II, Chapter X, Paragraphs 18-25 pages 156-158

The draft expresses the meaning of the clause in the form of a simple mathematical formula. (The method of adopting such formula is not novel and is to be found in the South African Income-tax Act.)

The formula is explained below :—

If G is the amount as *grossed up*, D the amount of the net (i.e. actual) dividend, and R the rate of income-tax applicable to the company expressed as a percentage, then, the existing rule is that—

$$G - \left(G \times \frac{R}{100} \right) = D$$

$$\text{i.e., } G \text{ minus } \frac{GR}{100} = D$$

$$\text{i.e., } D = G \left(1 - \frac{R}{100} \right)$$

$$\text{i.e., } G = \frac{D}{1 - \frac{R}{100}}$$

$$G = \frac{100 \times D}{100 - R}$$

By transposing left and right hand side.

(by transposing D and G)

(Simplified)

Now G is composed of the net amount of the dividend, *plus* the increase:

$$\text{i.e., } G = D + \text{Increase} = \frac{100 \times D}{100 - R}$$

$$\text{or Increase} = \frac{100D}{100 - R} - D$$

(Transposing D)

Now, if D on the extreme right hand is expressed in terms of fraction of 100-R, then,

$$\text{Increase} = \frac{100D}{100 - R} - \frac{D(100 - R)}{100 - R}$$

$$\text{i.e., Increase} = \frac{100D - [100D - RD]}{100 - R}$$

$$\text{i.e., Increase} = \frac{RD}{100 - R}$$

Therefore the gross dividend is the actual dividend plus the increase so arrived at.

Sub-clause (3)—This is based on the existing proviso to section 16(2). The expression “sum” has been replaced in the draft by the expression “fund” which is more appropriate in the context.

Notes to clause 60

Deductions (pertaining to income from other sources) have been made the subject-matter of a separate clause, as has been done in the case of income under other heads *e.g.* profits of business

Item (i)—needs no comments

Item (ii)—Existing sections 12(3) and 12(4) provide that where machinery etc. is let on hire, the assessee shall be "entitled to allowances" in accordance with the provisions of section 10(2), clauses (iv) to (vii). Now, these clauses of section 10(2) provide for two things —

- (1) Deductions for certain expenses, depreciation and loss on sale,
- (2) Charging of tax on profits on sale, destruction etc. of assets (Section 10(2)(vii), 3rd and 4th provisos)

Logically, therefore, section 12(3) and 12(4) are to be construed as adopting not only the provisions for deductions but also those for profits, in the clauses referred to

The provisions for deductions are incorporated in the draft item under discussion. The words "so far as may be" have been added, since these provisions may not fit in word by word in respect of income from other sources. Other verbal changes are consequential on the scheme adopted in the draft for existing section 10(2)(iv) to (vi)

So much of section 10(2)(vii) as deals with the charging of tax on profits arising from sale etc. has been embodied in the separate draft clause to follow, entitled "Profits chargeable to tax"

Item (iii)—Instead of the present wording "solely for the purpose of" the words "wholly and exclusively" have been used, to secure uniformity with the language of existing section 10(2)(xv)

Notes to clause 61

Amounts not deductible have been dealt with separately in this clause

Sub-clause (a)—Item (i) needs no comments. In items (ii) and (iii) minor verbal changes have been made on the lines of changes in the corresponding provisions for income under other heads, (*e.g.* see the draft for existing section 10(2)(iii), Proviso)

Sub-clause (b)—Section 12(5), in part, provides that the provisions of existing section 10(4A) apply to income from other sources as they apply to income from business. Since section 10(4A) relates to amounts disallowed as deductions, this part of section 12(5) finds a place here

The rest of existing section 12(5) is incorporated in the clause, to follow dealing with profits chargeable to tax

Notes to clause 62.

Sub-clause (1)—needs no comments.

Sub-clause (2)—See notes under draft clause entitled “Deductions”.

CHAPTER V

INCOMES OF OTHER PERSONS, INCLUDED IN
ASSEESSEE'S TOTAL INCOME*Notes to clause 63.*

Existing section 16(1)(c) deals with two kinds of transfers: (1) transfer of income only, without transfer of the corpus, and (2) revocable transfer of the corpus. In order to prevent the two kinds of transfers being mixed up, it is considered desirable to separate the two into two sections.

The draft clause under discussion deals with the first kind of transfer. The existing section uses the words “settlement or disposition” and then goes on to define these words as including, besides other things, “disposition” (see second proviso). For the sake of brevity, only the word “transfer” has been used in the draft throughout the group of clauses incorporating section 16(1)(c). The word ‘transfer’ has been defined separately.

The existing section contains the words “from assets remaining the property of the settlor or disponer”. These words do not easily convey the exact meaning. The obvious intention is to refer to a case where there is no transfer of the *property* from which the income arises. This is made clear in the draft.

Provisos 1 and 3 to the existing section 16(1)(c) are framed in wide language so as to convey the impression that they are applicable to transfers of mere income also. But since transfers of mere income (that is, transfers covered by the draft clause under discussion) fall within the section “whether revocable or not”, it seems incongruous to give any definition of “revocable” in respect of such transfers. It could not have been the intention that if the transfer of income is itself irrevocable, then the section will not apply. The first and third provisos should therefore be confined to transfers of corpus, being revocable. The corresponding draft clauses¹ accordingly narrow down the scope.

Other changes are verbal.

Notes to clause 64.

One or two verbal changes have been made, which do not need any comments.

¹ See draft clauses 65, 66.

Notes to clause 65

The existing provision, i.e., section 16(1)(c), third proviso, applies only to "settlement or disposition". It does not mention "transfer", but obviously all transfers of corpus are also covered by the proviso, since the main para of section 16(1)(c), latter part, speaks of "revocable transfer of assets", and the proviso is intended to save certain transfers which though revocable, are not revocable for a certain period. Hence the draft mentions transfers.

Sub-clause (1)—The existing provision speaks of a settlement etc. which is not revocable during the life-time of the 'person'. This "person" is obviously the transferee (see the opening line of the existing section 16(1)(c) which begins with 'all income arising to any person'). This has been made clear in the draft in para (a). In the case of a transfer by way of trust, the transferee, that is, the person to whom the income arises, is in theory, the trustee, but in substance the beneficiary. This has also been specifically provided for in the draft.

Sub-clause (2)—The verbal changes made are consequential.

Notes to clause 66

The small verbal changes made are consequential¹.

Retransfer of "income", mentioned in the existing section and also in the draft, will be applicable where, though the transfer is of corpus, the income is retransferable or resumable.

The definition of 'settlement or disposition', contained in the second proviso, has been replaced by a definition of transfer. The definition of "settlor or disponent" contained in the existing second proviso, does not seem to be necessary. The intention behind the definition, probably, was to clarify that in the case of a settlement by two or more persons each of the settlors is regarded as a settlor. It is unnecessary to have such a provision by way of specific definition.

Notes to clause 67

The words "being a male" have been added after "an individual". The reason is that the provision in question applies only to males as is now settled by the Supreme Court².

Item (1)—The existing sections 16(3)(a) and 16(3)(b) both begin with the words "so much of the income". This is provided in the draft clause opening lines, by the words "all such income", and repetition in the item corresponding to section 16(3)(b) has been avoided.

¹ See notes to draft clauses 63 and 65.

² CIT vs. *Sarda Devi* (1957) 32 ITR 615 SC.

The significance of section 16(3) lies in the principle that the income of one person (wife, child etc.) is regarded as the income of another person. In other words, the income arising to A is attributed to B. This has been brought out directly in the draft by commencing each item with words "to his wife" etc. (The existing items begin with words denoting the property and not the person).

The words "her husband" have been replaced by "such individual" for the sake of precision.

The words "of which" a person is a partner, have been replaced by "in which", as being more happy in the context.

Items (ii), (iii) & (iv)—See notes to item (i).

Item (v)—The existing section 16(3)(b), while speaking of "minor child", does not exclude the case of a married daughter. But an exception should be made for married daughters here also, as has been made by the existing section 16(3)(a), item (iv), since there is no reason for not having the same provision in both the cases. The words "not being a married daughter" have, therefore, been added in the draft.

CHAPTER VI

AGGREGATION OF INCOME AND SET-OFF OR CARRY FORWARD OF LOSSES

Notes to clause 68.

Incomes on which income-tax is not payable have been dealt with in a separate Chapter. Since such incomes form part of the total income for purposes of rate etc., this clause states that rule clearly.

Notes to clause 69.

Sub-clause (1)—Existing section 16(1) (b), dealing with the method of computing the share of the partner in the income of the firm, presents some difficulties. In the first place, the words "increased or decreased respectively by his share in the balance of the profits or loss after the deduction of any interest, salary, commission or other remuneration payable to any partner, in respect of the previous year" create some ambiguity, as it is not clear whether the words "after the deduction" are to be read with "his share" or with "balance" or with "profits or loss of the firm". Secondly, the words "increased or decreased respectively" leave some scope for improvement and simplification. Lastly, the section is a bit involved. An attempt has, therefore, been made to recast the provision and state the mode of computing the share step by step.

The direction to deduct interest etc. payable to any partner, contained in the existing section, is obviously necessary, in view of the fact that existing section 10(4)(b) disallows the deduction of any payment by way of interest etc. made by the firm to a partner. What section 16(1)(b) does is to authorise this deduction by a positive provision, when computing the partner's share.

The existing expression "profits or loss" has been replaced by 'total income', which is more precise

The word "paid" has been used in paragraphs (a), (b), (c), instead of the existing word "payable" The word has been defined in the clause This will secure uniformity with existing section 10(5)

Sub-clause (2)—This clause is new and is intended to make it clear that the classification of income under the various heads as given in existing section 6 is applicable to the share of a partner, in the same way as it applies to the firm In other words, just as a firm's income can be classified under "Income from house property", "Income from business" etc, similarly, even after the apportionment of the income to the partner, the amount apportioned to a partner is classified under various heads.

Sub clause (3)—This is new It gives effect to a decision of the Bombay High Court¹ which holds that interest paid on money borrowed by a partner and utilized by him for investing as capital in the firm is allowable as a deduction in computing the partner's total income, in so far as the total income comprises his share in a firm's income

For the sake of comprehensiveness, it has also been made clear that no other deduction is allowed in respect of the share

Sub-clause (4)—Existing section 16(1)(b), proviso, has been reproduced in this sub-clause Strictly speaking, this provision should be placed along with provisions for set off However, it serves a useful purpose as indicating that there is scope for set off It has therefore been allowed to remain here. The words 'in accordance' would, of course, make it clear that a partner's right to set off is not absolute, but is subject to the provisions of existing section 24

Notes to clause 70

This clause is new and is intended to give effect to the legal principle that unexplained cash credits appearing in the books of accounts of the assessee are assessable as income²

Under the decision of the Patna High Court cited, above³, such cash credits are treated as the income of the financial year preceding the assessment year, as the assessee could not have opted for any other previous year for such items We have by this clause definitely laid down that the previous year to which the income represented by such cash credits could be related is the previous year for which the account books are maintained and the cash credit is entered

¹ *Shanti Kumar Marayee v CIT* (1955) 27 ITR 69

² *Cf CIT v P Daxalia & Sons* (1955) 27 ITR 515 Patna High Court)

See also page 557 of Kanga and Alkhyala 1958 Edition.

Notes to clause 71.

This is new. Investments not appearing in the books and not explained satisfactorily are made assessable for the financial year in which the investments have been made.

Notes to clause 72.

This is new. It deals with set off of a loss from one business against profits under any other business.¹ The principle is well accepted by courts¹, and has been codified for the sake of comprehensiveness.

Notes to clause 73.

General—The scheme of section 24 of the existing Act has, in the draft, been altered by a redistribution of its provisions. The existing section deals separately with—

- (1) set off in the same year, and
- (2) set off in succeeding years.

But an alternative method of arrangement of the provisions would be to deal first with set off of losses, whether in the same year or in succeeding years and then state the exceptions in both cases. This would give to a layman a complete picture of what is to be done with regard to the losses sustained by him. The draft, therefore, places the provisions contained in the existing section 24 in separate sections in the following order—

- (i) General provision regarding set off in the same year and set off in the succeeding years;
- (ii) special provisions regarding speculation losses;
- (iii) special provisions regarding set off of losses under capital gains;
- (iv) special provisions for registered firms;
- (v) special provisions for unregistered firms assessed as registered firms;
- (vi) special provisions for partners of unregistered firms;
- (vii) change in constitution of firms; and
- (viii) submission of returns in respect of losses.

Sub-clause (1)—As already explained above, the general rule relating to set off, whether in the same year or in succeeding years, has been dealt with in the beginning.²

¹ *Anglo French Textile Co Ltd., V. C.I.T.*, (1953), 23 I.T.R. 82. For other cases see Kanga and 'alkhivala's commentary on the Act, 1958 Edn., p. 322.

² Draft clause 73.

Sub-clause (1) states the rule relating to set off in the same year (from one head to another) The existing expression 'loss of profits or gains' is slightly inappropriate, as it speaks of 'loss' of 'profits' It has, therefore, been replaced by the words 'net result is a loss' The words "subject to the other provisions of this Chapter" have been added in order to make it clear that there are special provisions regarding firms, capital gains, speculation losses etc which appear in the subsequent clauses.

Set off is allowed, not with reference to the previous year, but with reference to the assessment year Previous years may be different according to the source of income, but the Income-tax Officer is concerned only with the assessment year for which the loss is to be computed This is the position for carry forward also Suitable verbal changes have been made on this point in the draft clauses concerned

Under the existing law a loss arising under any head is to be set off against income under the head 'Capital gains' Now it is well understood that the taxation under the head 'Capital gains' is at a lower rate than the taxation under other heads, by the operation of existing section 17(6) The result is, that an assessee is forced to set off a loss against capital gains He thereby obtains a reduction of his taxable income which does not fetch the same benefit as it would have fetched if the set off had been confined to other heads For example, if a loss of Rs. 2,000 under the head "Income from property" is set off against capital gains, then, assuming that the tax on capital gains works out at 10 N.P. per rupee, the reduction in tax which the assessee would obtain by such set-off would be Rs. 200 While, if the assessee is to set off the loss only against income other than capital gains, then, assuming that the rate of tax under other heads is 25 N.P. per rupee, the reduction in tax which the assessee would obtain by such set-off would be Rs. 500 It would seem that there is no reason for driving the assessee to a course which causes pecuniary loss to him It may be noted that in the converse case when a loss is sustained under capital gains, the assessee is not allowed to set off the loss against any other head, vide existing section 24(2A) The position regarding set off against income under the head capital gains has therefore been altered on the lines indicated above The necessary changes have been made in the draft sub-clause under discussion and the draft clause corresponding to existing section 24(2A) has been made comprehensive so as to embody the law relating to set off of a loss under other head against capital gains, and vice versa, with the change discussed above

Sub-clause (2)—Drafting changes have been made on the lines of the changes made in existing section 24(1) See notes to sub-clause (1) above

The words "had no other head of income" have been replaced in the draft by the words "had no income under any other head", in order to make the intention clear that carry forward of the whole loss is allowed because there is no *income* against which the loss could be set off in the year in which the loss arose.

Section 24(2), Proviso (a), has been already repealed.

Section 24(2), Provisos (c), (d) and (e), are dealt with in succeeding clauses.

Section 24(2), Proviso (f), has been omitted, as its operation was confined to assessment years which have all expired.

Section 24(3) is being transferred to the Chapter on Procedure for Assessment.

Sub-clause (3)—Does not need any comments¹.

Sub-clause (4)—Carry forward of losses is allowed for a maximum period of eight years now [See the amendment made by the Finance (No. 2) Act, 1957]. Sub-clause (3) embodies this rule. In the existing Act (as amended in 1957), the words "but no loss shall be so carried forward for more than eight years" appear as a part of section 24(2), clause (iii). This causes an ambiguity as to whether the limit of eight years is to be counted with reference to the carry forward referred to in section 24(2)(iii) or whether in counting eight years the year of first carry forward under section 24(2)(ii) is also to be counted. The latter construction is, obviously, what was intended. In order to make this clear the limitation has been placed in a separate sub-clause.

Notes to clause 74.

General—Speculation losses have been dealt with separately in this clause.

Sub-clause (1)—The expression "speculation business" has been substituted for the expression "business consisting of speculative transactions etc.", since the draft clause relating to chargeability of income under the head "Profits and gains of business etc." makes use of the expression "speculation business".

Sub-clause (1) relates to the very previous year in which the loss was incurred and is based on the first proviso to existing section 24(1).

Sub-clauses (2) and (3) and (4)—The carry forward and set off of speculation losses has been dealt with here. The clause has been made self-contained, for the sake of convenience, though this has necessitated a slight amount of repetition.²

¹ As to the correct interpretation of this provision see now *Aluminium Corporation of India vs C.I.T. West Bengal*, A. R. (1958) Cal. 404.

² Draft clause 28, Explanation 2.

³ See also notes to draft clause 73 (2).

Notes to clause 75

The changes made are verbal and do not need any comments. Notes to the main clause dealing with set off explain the drafting changes made in the existing section 24(2), and the draft clause under discussion has also been framed keeping in view those changes.

As already explained in the notes to that clause, the position regarding set off against capital gains has been dealt with comprehensively in this clause.

Notes to clause 76

Sub-clause (1)—does not need any detailed comments.

Sub-clause (2)—The prohibition against carry forward by a registered firm, contained in existing section 24(2), proviso (c), earlier half, has been embodied in this clause with a few drafting changes explained below.

The existing provision refers to the loss of a registered firm "which has been apportioned". These words are misleading, in the case of a registered firm apportionment is compulsory and universal and no question of confining the provision to a loss which 'has been' apportioned can arise. The language has, therefore, been slightly altered, and the words in question omitted.

As a matter of fact it is not necessary to have any provision at all to the effect that a registered firm cannot carry forward its losses. The reason is, that when the loss of A is apportioned between B and C, it no longer subsists as the loss of A, and the question of its carry forward by A should not arise. The proviso is, however, useful by way of clarification particularly in view of the peculiar nature of the provisions for assessment of firms and partners in the Act, and has, therefore been retained.

The prohibition is presumably applicable to the carry forward and set off of losses under capital gains also and the draft has been framed on this assumption.

Notes to clause 77

Existing section 24(2), proviso (d), says that when an unregistered firm is assessed under existing section 23(5)(b), its losses shall "also be carried forward and set off under this section as if it were a registered firm". This is not an accurate way of stating the position. A registered firm is never allowed to carry forward its loss [see existing section 24 sub-section (2), proviso (c), earlier half], and therefore, to say that the loss may be "carried forward as if it were a registered firm" is meaningless. The language has, therefore, been altered.

Notes to clause 78

General—The second proviso to existing section 24(1) consists of two parts, the earlier part dealing with unregistered firms and the latter part dealing with registered firms.

¹ Clause 73 (r)

This clause deals with unregistered firms, while registered firms have been already dealt with¹.

Sub-clause (1)—The existing provision, for unregistered firms, says that the loss of the firm shall be set off only against that income of the firm and not against the income of any of the partners. When analysed, this gives the following propositions :—

- (1) The loss of the firm shall be set off only against the income of the firm. This proposition has been separately dealt with in the draft, though it follows from the principal provision in the draft² i.e., any assessee is entitled to have loss under one head set off against the income under any other head. That provision applies to unregistered firms, just as it applies to the other assessees.
- (2) The loss shall not be set off against the income of "any of the partners".

What is really meant is that where an assessee is a partner in an unregistered firm and his share is a loss, the loss cannot be set off against his other income. Draft sub-clause 2(a) embodies this proposition.

Sub-clause (2)—As to para. (a), see notes above. As to para. (b), minor changes have been made.

Strictly speaking, this provision is also unnecessary. The main provision in section 24(2) applies to all assessees, including unregistered firms. Therefore, any loss incurred by the firm is to be carried forward in computing the firm's income. The question of its carry forward in a partner's income cannot arise. The provision is, however, useful by way of clarification, as it emphasises the proposition that a partner in an unregistered firm cannot claim a separate set off and that all that is allowed is the collective set off available to the firm as a whole.

Notes to clause 79.

This clause does not need any detailed comments, except that the draft makes it clear that the limitation imposed by the existing section applies in respect of set off under existing sections 24(1) and 24(2A) as well as under section 24(2) and section 24(2B).

Notes to clause 80.

A part of existing section 22, sub-section (2A), has been incorporated in this clause, since it is germane to the set off of losses.

The limitation should apply not only to carry forward under existing section 24, sub-section (2), but also to carry forward under existing section 24, sub-section (2B). This has been made clear in the draft.

¹ Draft clause 76.

² Draft clause 73 (1).

Notes to clause 75

The changes made are verbal and do not need comments. Notes to the main clause dealing with *se* explain the drafting changes made in the existing *se* 24(2), and the draft clause under discussion has also been framed keeping in view those changes.

As already explained in the notes to that clause, the position regarding set off against capital gains has been dealt with comprehensively in this clause.

Notes to clause 76

Sub-clause (1)—does not need any detailed comments.

Sub-clause (2)—The prohibition against carry forward by a registered firm, contained in existing section 24(2), proviso (c), earlier half, has been embodied in this clause with a few drafting changes explained below.

The existing provision refers to the loss of a registered firm "which has been apportioned". These words are misleading, in the case of a registered firm apportionment is compulsory and universal and no question of confining the provision to a loss which has been apportioned can arise. The language has, therefore, been slightly altered, and the words in question omitted.

As a matter of fact it is not necessary to have any provision at all to the effect that a registered firm cannot carry forward its losses. The reason is, that when the loss of A is apportioned between B and C, it no longer subsists as the loss of A and the question of its carry forward by A should not arise. The proviso is, however, useful by way of clarification particularly in view of the peculiar nature of the provisions for assessment of firms and partnerships in the Act and has therefore been retained.

The prohibition is presumably applicable to the carry forward and set off of losses under capital gains also, and the draft has been framed on this assumption.

Notes to clause 77

Existing section 24(2), proviso (d), says that when an unregistered firm is assessed under existing section 23(5)(b), its losses shall "also be carried forward and set off under this section as if it were a registered firm". This is not an accurate way of stating the position. A registered firm is never allowed to carry forward its loss [see existing section 24 sub-section (2) proviso (c) earlier half] and therefore, to say that the loss may be "carried forward as if it were a registered firm" is meaningless. The language has, therefore, been altered.

Notes to clause 78

General.—The second proviso to existing section 24(1) consists of two parts the earlier part dealing with unregistered firms and the latter part dealing with registered firms.

¹ Clause 73 (1)

This clause deals with unregistered firms, while registered firms have been already dealt with¹.

Sub-clause (1)—The existing provision, for unregistered firms, says that the loss of the firm shall be set off only against that income of the firm and not against the income of any of the partners. When analysed, this gives the following propositions :—

- (1) The loss of the firm shall be set off only against the income of the firm. This proposition has been separately dealt with in the draft, though it follows from the principal provision in the draft² i.e., any assessee is entitled to have loss under one head set off against the income under any other head. That provision applies to unregistered firms, just as it applies to the other assessees.
- (2) The loss shall not be set off against the income of "any of the partners".

What is really meant is that where an assessee is a partner in an unregistered firm and his share is a loss, the loss cannot be set off against his other income. Draft sub-clause 2(a) embodies this proposition.

Sub-clause (2)—As to para. (a), see notes above. As to para. (b), minor changes have been made.

Strictly speaking, this provision is also unnecessary. The main provision in section 24(2) applies to all assessees, including unregistered firms. Therefore, any loss incurred by the firm is to be carried forward in computing the firm's income. The question of its carry forward in a partner's income cannot arise. The provision is, however, useful by way of clarification, as it emphasises the proposition that a partner in an unregistered firm cannot claim a separate set off and that all that is allowed is the collective set off available to the firm as a whole.

Notes to clause 79.

This clause does not need any detailed comments, except that the draft makes it clear that the limitation imposed by the existing section applies in respect of set off under existing sections 24(1) and 24(2A) as well as under section 24(2) and section 24(2B).

Notes to clause 80.

A part of existing section 22, sub-section (2A), has been incorporated in this clause, since it is germane to the set off of losses.

The limitation should apply not only to carry forward under existing section 24, sub-section (2), but also to carry forward under existing section 24, sub-section (2B). This has been made clear in the draft.

¹ Draft clause 76.

² Draft clause 73 (1).

CHAPTER VII

INCOME ON WHICH NO INCOME-TAX IS PAYABLE

Notes to clause 81

General—

1 It should be remembered that exemption from tax is totally different from exclusion from total income dealt with in Chapter III. In the latter case the income excluded does not form part of the total income, while in the former case it forms part of the total income but no tax is payable thereon though for other purposes such as rate, etc., it continues to be part of the total income.

2 Exemptions from income-tax strictly so called can be classified as follows —

- (i) Exemption enjoyed by an income which, though it forms part of the total income, is not subject to tax. (Such income would count for determining the rate, but once the rate is determined the income is not itself taken into account in calculating the quantum of tax)
- (ii) Sums on which rebate of tax is allowed at the average rate of tax

3 The existing Act does make a distinction between categories (i) and (ii) above. But the distinction is obviously necessary. The draft, therefore, deals with the two categories in separate chapters.

4 In the draft exemptions which are really in the nature of rebates in respect of expenditure have been placed under category (ii).

5 The case of earned income relief presents some special features and has been discussed in the notes to the clause relating thereto.

6 Exemptions in respect of super-tax have for the sake of clarity, been dealt with separately in Chapter XI on super tax.

Clause 81 Existing section 15A earlier part, has been embodied in this clause, with minor verbal changes.

The latter part of the section has of course been omitted as it becomes obsolete in view of the recent legislative practice not to provide for earned income relief.

The earlier part has however been retained here, leaving it to the Government to omit it if it is decided permanently to abolish earned income relief.

Notes to clause 82

The clause does not need any comments

The exemption from super-tax has been dealt with in the Chapter on super-tax.

Notes to clause 83.

The clause does not need any comments.

The exemption from super-tax has been dealt with in the Chapter on super-tax.

The question of providing for grossing up of dividends of co-operative societies [on the lines of the provision for companies—existing section 16(2)] has not been considered, as the provision in respect of companies has itself provoked a lot of controversy.

Notes to clause 84.

The clause does not need any comments.

The exemption from super-tax has been dealt with in the Chapter on super-tax.

Notes to clause 85.

Existing section 15C has been embodied in this clause. The few verbal changes that have been made are explained below :

Sub-clause (2)—The conditions specified in existing section 15C(2) are cumulative. This is clear from the existing language and has been made still more clear in the draft.

Sub-clause (6)—Existing section 15C(6) uses the expression “financial year”. This has been replaced in the draft by the expression “assessment year” which is more appropriate.

The existing sub-section speaks of the four “assessments” immediately succeeding. What is meant is, the four “assessment years”. The draft makes this clear. An assessment made in a particular year is not necessarily identical with that assessment year, since sometimes an assessment is made late, after the assessment year has expired.

The exemption from super-tax has been dealt with in the Chapter on super-tax.

Notes to clause 86.

This merely reproduces existing section 15C(4) and as the subject matter is different it is made a separate section.

Notes to clause 87.

Items (i) and (ii)—The second and third provisos to existing section 8 have been embodied in these items with slight verbal changes. The expression “receivable” has been replaced by the word “received”.¹

¹ Compare draft clause 18.

Item (iii)—embodies existing section 14(2)(a), with slight verbal changes

Item (iv)—deals with the exemption contained in existing section 14(2)(aa). The existing wording is slightly involved. An attempt has been made in the draft to simplify the expression by making a few verbal changes, and splitting up the provision into clauses

Item (v)—does not need any comments

CHAPTER VIII REBATES AND RELIEFS

Notes to clause 88

General—The provisions contained in the existing Act which are in the nature of rebates of income-tax on certain expenditure have been collected together in this Chapter. (The discussion at the beginning of notes to the previous Chapter explains the scheme adopted in the draft in respect of exemptions from tax.)

Sub-clause (1), paragraphs (a) and (b)—These deal with rebate in respect of life insurance premiums. The following drafting changes have been made—

- (i) The words "in the previous year" have been added in the draft for existing section 15(1), for the sake of precision
- (ii) The existing section 15(1) speaks of sums paid "to effect" an insurance, but when speaking of deferred annuities it uses the words "in respect of" a contract for a deferred annuity. For the sake of uniformity, the expression "to effect" has, in the draft, been used for both the cases. See items (i) and (ii) of paragraph (a)
- (iii) While sums paid as ordinary premium might be covered by the existing words "to effect" an insurance, sums paid for the purpose of keeping alive a policy or preventing it from lapsing may not be covered by those words. In the draft, therefore the words "keep in force" have been added both in respect of insurance and in respect of contracts for deferred annuities. See items (i) and (ii) of paragraph (a) and also paragraph (b)

Sub-clause (1), paragraph (c)—The words "in the previous year", have been added to secure precision

The words "provided that the sum so deducted shall not exceed one-fifth of the salary", existing in section 7 sub-section (1), First Proviso have in the draft been replaced by the words "in so far as the sum so deducted

does not exceed one-fifth of the salary". Where the deduction exceeds one-fifth of the salary, the existing language would, if construed strictly, exclude the deduction *in toto*. The obvious intention, however, is to *limit* the exemption to one-fifth and not to *completely* disallow the exemption in such cases.

The limit of one-fifth contained in the existing section has been repeated in the draft; but, since existing section 15(3) has been amended recently (*vide* Finance No. (2) Act 1957) so as to raise the limit under that section from one-fifth to one-fourth, it would be desirable to make a corresponding increase in the limit under existing section 7(1) First Proviso, also.

Sub-clause (1), paragraphs (d) & (e), do not need any comments.

Sub-clause (2)—Existing section 15(2A) has been split up for the sake of simplicity. Further, the negative form of the existing provisions has been converted into a positive one, *vide* the opening lines.

The words appearing at the end in the existing provision, "and which is not the sum actually assured" really indicate a benefit over and above the assured sum. This is made clear in the draft. The existing words "either before or after death" unnecessarily increase the length of the provision; the words in the draft "under the policy" will meet both the situations. (It is clear that the existing words "which is to be or may be received" are to be confined to payments made by the company under the policy.

✓ The existing words "either by the person paying the premiums or by any other person" have been replaced by the words "by any person", for simplicity.

Sub-clause (3)—Existing section 15(3) has been reproduced here in a simplified form.

The existing sub-section does not expressly mention sums exempt under section 58R for the purpose of counting the maximum aggregate that can be exempted; but the effect of the words at the end of section 58R, main para. "in the case of an employee be treated for all the purposes of this Act as if it were a sum to which the provisions of section 15 apply" is that the employee's contributions are also to be counted for the purposes of section 15(3). For this reason, sub-clause (3) makes a reference to all the sums exempt under any item of the draft clause, which will include sub-clause (1) (d) also.

Notes to clause 89.

General—What the Act contemplates in section 15B is really a rebate (at the average rate) in respect of tax. The provision has, therefore, been placed in the present Chapter on Rebates.

The First Proviso to existing section 15B(1) has been dealt with in the Chapter on Super-tax, where the exemption for super-tax in respect of donations has been dealt with separately¹

Sub-clause (2)—does not need any comments

Sub-clause (3)—The changes made are all verbal and consequential on the scheme adopted in the Act in respect of exemptions

Sub clause (4)—does not need any comments, since the changes are minor and verbal

Sub-clause (5)—The existing section 15B(2) requires that certain conditions should be fulfilled by an institution or fund to which the section applies Condition No (iv) contains the word 'or' at the end and is followed by condition No (v) It is not clear whether the last condition No (v) is an alternative to condition No (iv) only, or whether it is to take the place of all the conditions (i) to (iv) Since condition No (iii) contains the word 'and' at the end it can be argued that conditions Nos (i) to (iv) are to be taken together and condition No (v) is to be taken separately But this does not seem to have been the intention the result of such construction would be to eliminate a very important requirement, namely, the requirement in condition No (i) that the income should be exempt under the category for "Charitable Institutions" The first three conditions should be fulfilled by all the institutions or funds while the fourth and fifth conditions are alternatives to each other This intention has been brought out in the draft by combining the contents of existing condition No (v) with condition No (iv)

Condition No (i) at present requires that the institution should be one "the income whereof is exempt under clause (i) of sub section (3) of section 4" But in cases where an institution has no property, the application of this condition becomes difficult The wording has, therefore, been slightly altered Further, institutions though not strictly falling under section (4) (3) (i), such as universities or educational institutions not existing for profit should be regarded as standing on the same footing as purely charitable institutions and they have therefore, been included in the draft (just as their income has been exempted—See the draft clause inserted on the subject' Institutions depending on voluntary contributions have also been included in the draft

Existing condition No (iv) when mentioning universities requires that they should be established by law but when speaking of other educational institutions recognised by or affiliated to universities it does not add the requirement that the university should be established by law

¹ Vide draft clause 109 (2)

² Draft clause 11(24)

The intention, obviously, is to require that the affiliating or recognising university must itself be established by law. This has been made clear in the draft.

Sub-clause (6)—does not need any comments.

The exemption in respect of super-tax has been dealt with separately in the Chapter on super-tax¹.

It would be conducive to simplicity and will lessen the work of the administration, if a provision is made for the issue of a certificate (after enquiry by the Income-tax Officer or the Inspecting Assistant Commissioner having jurisdiction over the institution or trust) that the institution or trust satisfies the conditions of this section. Donations made to such institutions or trusts will automatically be entitled to the exemption if the other conditions of the section are fulfilled. This would obviate enquiry every year by different Income-tax Officers before whom the exemption is claimed by donors in different jurisdictions.

Notes to clause 90.

The existing provision is confined to "Profits in lieu of salary". In the draft it has been extended to "Perquisites" also. Perquisites may sometimes be in cash, and the provision might be useful in such cases.

The power to grant relief in respect of super-tax has been dealt with separately in the Chapter on Super-tax².

Notes to clause 91.

Existing section 25, sub-sections (3) and (4), deal with two things :—

- (i) total exemption for income of the year in which a business is discontinued or succeeded to, and
- (ii) substitution relief, whereunder the income of the year of discontinuance or succession can be substituted for the income of the immediately preceding year.

The first concession has been already dealt with in a previous chapter; the second concession has been dealt with in the clause under discussion. A few drafting changes have been made in order to secure clarity.

As to the position concerning super-tax, see the Chapter on super-tax.³

¹ *Vide* draft clause 109.

² *Vide* draft clause 112.

³ *Vide* draft clause 13 in chapter III

⁴ *Vide* draft clause 100.

The provision embodied in the draft is applicable only to a business assessed under the 1918 Act. It is for consideration whether this concession is at all necessary after the lapse of such a long time¹

CHAPTER IX DOUBLE TAXATION RELIEF

Notes to clause 92

This clause does not need any comments

Notes to clause 93

The following drafting changes have been made in the existing sections—

- (i) The word "previous" has been added before the word 'year', since residence is defined with reference to previous year
- (ii) The existing words "country with which there is no reciprocal arrangement" have been replaced by the words "country with which there is no agreement under section [49A]" for the sake of precision. The "reciprocal arrangement" referred to in the existing section could only be an agreement under section 49A.
- (iii) Sub-sections (2) and (4) of existing section 49D have been omitted, as their operation is now spent
- (iv) Suitable words have been added at the end of sub-clause (1) to cover a case where the Indian rate and the foreign rate are equal

Notes to clause 94

Existing section 49C(1) contains a reference to section 49. But section 49 has been repealed by the Income-tax and Business Profits Tax (Amendment) Act, 1948 (48 of 1948). The reference to section 49 has, therefore, been omitted in the draft.

No other change has been made

CHAPTER X PROVISIONS AGAINST AVOIDANCE OF TAX

Notes to clause 95

Sub-section (2) of section 42 has been redrafted with a view to bringing out what was really intended. The object is to catch the income of the resident where a business is carried on between a resident and a non-resident and the profits of such business are camouflaged in such a way

¹ Cf. the discussion in the Report of the Income-tax Investigation Commission (1948), pages 153-155, paragraphs 345-350

that the resident receives either no profits or less than normal profits. In such a case the Income-tax Officer has to determine the true profits of the resident attributable to such camouflaged transactions. This is now brought out clearly in the draft.

The existing section says that the income of the non-resident shall be chargeable "in the name of the resident who shall be deemed to be..... the assessee". These words have been replaced in the draft by the words "and include such amount in the total income of the resident". This verbal change has been made for the sake of uniformity, and for emphasising the true construction of the section as explained above.

Notes to clause 96.

The existing section 44D relating to transfer of assets to non-residents is considerably involved in its expression. It is difficult to understand the section as a whole and its grammatical structure without some effort.¹ The section has been slightly recast on the lines of section 412 of the U.K. Act.² The important points of difference between the existing section and the draft clause are explained below :—

(1) Sub-sections (1) and (2) of the existing section 44D repeat the words "transfer of assets by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income.....becomes payable" etc. This condition precedent has been transferred in the draft clause to the opening lines, thus saving the repetition appearing in existing sub-section (2).

(2) The existing section 44D(1) says that a transfer of assets must be one whereby "any income which, if it were the income of such person, would be chargeable to income-tax" becomes payable to a non-resident. This requirement of potential chargeability is thus applicable to the income *arising from the transfer*. In the draft, however, it has been removed from that place and shifted to the income over which the resident has *power to enjoy* [See draft sub-clause (1) (a)]. This change is in harmony with the more important change discussed below under item (5).

(3) In existing section 44D(1), the reference to associated operations occurs only in the beginning of the section, that is, the portion referring to a transfer whereby certain income arises. This reference is not repeated in the subsequent portion dealing with acquisition of rights by the transfer. In other words, the rights giving the power to enjoy certain income must, at present, flow from

¹ For a criticism of s. 412 of the U. K. Act corresponding to s. 44D of our Act, see p. 111, para. 1029(5) of the Report of the Royal Commission on the Taxation of Profits and Income (Final Report).

² U. K. Income-tax Act, 1952. Cf. U. K. Finance Act, 1936, Section 18.

the transfer itself Under the clause as drafted, however, these rights might flow either from the transfer or from its associated op rations

(4) The words 'in consequence of which' occurring for the second time in the existing section 44D(1) have been omitted in the draft These words related to 'rights in consequence of which he has power to enjoy' It seems sufficient to have the words "by virtue of in this context

(5) Under the existing section 44D(1), the income to be taxed as the income of the resident is "that income", that is, the income earlier referred to as arising from the transfer to a non-resident, which the resident has power to enjoy Thus, two ingredients are required for taxing the income at present (i) the income must arise from the transfer, and (ii) it must be income which the resident has power to enjoy The draft clause, however, makes an important departure here All that is required in order to tax an income is that (other conditions being satisfied), it must be income which the resident has power to enjoy Under the draft it is not necessary that the taxable income should coincide with the income arising to a non-resident from the transfer Thus the power to enjoy must arise from the transfer, but the words "power to enjoy such income" have been replaced by 'any income of a non resident'

(6) The existing section 44D(2) suffers from one important flaw in that it does not state how the sum referred to therein is to arise The section says "Where any person receives or is entitled to receive any sum paid by way of loan etc such income shall be deemed to be the income' of the resident One would have expected the section to say, like sub section (1), "when any person by means of any transfer receives any sum etc The draft sub clause (1)(b) makes it clear that the capital sum must be one "the payment whereof is in any way connected with the transfer"

This is merely a condition to be satisfied What is to be charged to tax is a different matter, discussed in the next item

(7) The existing section 44D(2) says that "such income shall be deemed to be the income' of the resident It is with some effort that one is able to locate the income to which this word 'such' is applicable, it is the income becoming payable to a non-resident under the transfer This has been expressed in a more intelligible form in the draft

(8) The length of the existing section 44D(2) has been reduced in the draft by replacing the words "any sum paid otherwise than his income' by the words "capital sum' which has been separately defined in draft sub-clause (6)

Notes to clause 97.

Existing sections 44E and 44F have been combined in this clause, and certain important changes of substance have been made as follows:—

(1) Existing section 44E(1) applies where the owner of the securities, having agreed to sell or transfer the securities, “by the same or any collateral agreement” agrees to buy back etc., the securities. In practice, however it is difficult for the Department to prove that there was an “agreement” to buy back the securities. Moreover, as a matter of substance, it does not appear to be necessary to insist on the requirement of “same or collateral agreement”. The object of the section is to prevent avoidance of tax, and the provision should extend to all cases where the transaction of sale and re-purchase of securities results in such avoidance. The scope of the section has, accordingly, been extended in the draft [see sub-clause (1)].

(2) It has, however, been made clear in the draft that the provision in the existing section 44E will not apply if there was no avoidance or if the avoidance is not systematic; see draft sub-clause (4) which mentions sub-section (1) specifically.

(3) Existing section 44F, operative part, deals with the cases where a person transfers securities before the declaration of the dividend, thus shifting the right to receive the dividend to another person. The operative part of this section has been incorporated in draft sub-clause (3). An important departure from the existing section has, however, been made; the existing section provides for apportionment, *vide* sub-section (2), latter half read with sub-section (3). Under it, only the income attributable to the period upto the transfer is deemed to be the income of the transferor. Under the draft, however, the income for the full year will be deemed to be the income of the transferor, *vide* sub-clause (3), last line. Since the provision is intended to stop avoidance, it should go the full way.

Existing section 44F(2) applies only where the avoidance is “more than 10 per cent of the amount of income-tax” for the year. This requirement has been omitted in the draft, in order to make the provision against avoidance more stringent.

(4) While the operative portion of section 44F thus finds a place in the draft, the machinery provisions in sub-sections (4), (5) and (6) of that section have been omitted. The notice under section 44F(1) will now be covered by draft sub-clause (7).

Apart from these important changes, the other changes are of very minor nature and need no comments. The existing section 44D(7)(c) relating to dividends deemed to have been distributed to a person has been omitted in view of the form in which section 23A stands after its amendment in 1955.

CHAPTER XI

SUPER-TAX

Notes to clause 98

Sub-clause (1)—The following drafting changes have been made —

1 Drafting changes made in the charging section for income-tax (section 2) have been followed in drafting this clause also Thus—

- (i) the word "year" has been replaced by "assessment year",
- (ii) after the words "previous year", the words "or previous years", have been added,
- (iii) the enumeration of various classes of assessee ("individual", undivided family" etc) has been replaced by person",
- (iv) a proviso has been added to deal with cases where tax is charged in the year of income or deducted in advance

2 The words "save as otherwise provided in this Act" have been added to make it clear that the charging provision is subject to other provisions, e.g., provisions for rebates etc Cf the words 'in accordance with and subject to the provisions of this Act,' in existing section 3

3 The words "a Central Act" have been replaced by "any Central Act", Cf existing section 3

Sub-clause (2)—does not need any comments

Sub clause (3)—The existing section deals only with the case of a firm assessed under section 23(5)(b) The more frequent case of a firm which is actually registered has not been treated elaborately in the section The draft sub-clause sets out the position comprehensively

The second proviso to existing section 55 is transferred to a separate clause¹, under the group of clauses dealing with income not forming part of total income for super-tax

Notes to clause 99

The changes made are consequential on the changes made in existing section 55 main para

As regards earned income the language of the draft clauses on the subject will suffice to exclude existing section 15A for super tax²

¹ Draft clause 104.

² Vide draft clause 81 read with draft clause 102 (2)

Notes to clause 100.

This corresponds to the proviso (a), appearing below existing section 25(4).

The existing provision says that the provisions of section 25(3) & (4) shall not apply to 'super-tax'. The word "super-tax" has, in the draft, been replaced by the words "determination of total income" etc. which are more appropriate.

Notes to clause 101.

This is new. Interest on income-tax free securities is chargeable to super-tax. It is fair that reasonable sums spent on realising such interest, and interest paid on money borrowed for investment in such securities, shall be allowed as deductions. (Cf. existing section 8, 1st Proviso, earlier half.)

The provision becomes particularly necessary in the draft, because so far as the computation of total income for income-tax is concerned, the draft clause for section 8 contains an express prohibition against deducting such sums.¹

Notes to clause 102.

Sub-clause (1)—Existing section 58(1) has, in the draft, been split up into two. The general rule that the provisions for income-tax shall apply to the charge etc. of super-tax has been stated in sub-clause (1), while the exceptions are dealt with separately in sub-clause (2).

The words "save as otherwise provided in this Act", added in the draft, point to draft sub-clause (2) and are also intended to make it clear that there might be cases where a provision is applicable to income-tax only, e.g., existing section 49C(1).

Sub-clause (2)—Existing section 58(1) excludes several sections of the Act in relation to super-tax. Most of these sections are, in the draft, placed either in the Chapter on Income on which no income-tax is payable or in the Chapter on Rebate and Relief of income-tax. It would, therefore, suffice to say that these two chapters do not apply for super-tax.

So far as sections not contained in these chapters are concerned, they have been mentioned in the draft sub-clause under discussion [except section 58G(2) as to which see discussion below].

Section 58G(2) has been mentioned in existing section 58 as one of the excluded sections. But really speaking, the substance of it applies for super-tax also. What section 58G(2) provides is that the accumulated balance in an approved superannuation fund shall be excluded from the

¹ *Vide* draft clause 21 (ii) and (iii).

total income and exempt from income-tax. This does not apply in terms for super-tax; but section 58G(1), earlier part says that such balance shall be exempt from super-tax. This "exemption" from super-tax has, under the scheme adopted in the draft, to be treated as exclusion from total income. Therefore the position regarding the balance in question is the same both for income-tax and super-tax, when section 58G(2) is read together with section 58G(1), and there is no point in saying that section 58G(2) does not apply for super-tax.

The words "Save as expressly provided in the Chapter" are meant for cases where a provision in the super-tax Chapter (e.g., clause regarding exemption of donations from super-tax) expressly refers to the conditions specified in the corresponding clause for exemption from income-tax.

Existing section 58(2) will be dealt with in the Chapter dealing with Collection and recovery of tax.

Notes to clause 103

This clause, which is new, has become necessary in the scheme followed in the draft, which deals separately with income-tax and super-tax. The object of the clause is merely to facilitate the application, for super-tax, of certain provisions contained in the sections dealing with avoidance of tax. Those provisions as reproduced in the draft, use the expression "income-tax" only and hence it becomes necessary to repeat them for super-tax.

Notes to clause 104

General—The existing provisions for exemptions from super-tax say that super tax "shall not be payable" in respect of the income in question or that the income "shall be exempt from super-tax." This appears like an exemption from tax not an exclusion from total income. But it seems that in the case of super-tax, the exemptions should be treated as cases of exclusions from total income (except in cases where section 17(3) expressly directs the exemption to be treated as a case of rebate).

Though section 16(1) says that "in computing the total income" the exempted incomes are to be included in the total income, and though section 56 would apply section 16 for super-tax also, still section 16 has to be confined to cases dealt within section 17(3). The draft, therefore, treats such exemptions as exclusions from total income. Drafting changes have, wherever necessary, been made to carry out this scheme.

[So far as the sections expressly referred to in existing section 17(3) are concerned, they have to be treated as cases of rebates.]

Clause 104

The words "profits and gains" have been replaced by the term "income" which is more precise. The provision is, obviously, applicable to all income and not only income from business. Other changes are consequential on this change and on the scheme adopted in the draft to treat exemptions from super-tax as exclusions from total income.

Notes to clause 105.

The verbal changes made are consequential on the scheme adopted in the draft to treat exemptions from super-tax as exclusions from total income¹.

Notes to clause 106.

This clause does not need any comments, since the changes are only verbal and consequential.

Notes to clause 107.

The changes are verbal and consequential.

Notes to clause 108.

General.—Existing section 56A, sub-section (1), item (ii) says that one of the conditions for availability of the exemption under the section is that the income of the Indian company (which pays the dividend) "would have been exempt under the operation of section 15C if the provisions of that section had been applicable thereto". It is not clear from these words how much of section 15C is to be read into section 56A. In the interest of clarity, it seems desirable to incorporate, in section 56A itself, whatever conditions are to be borrowed from section 15C.

The question, therefore, that arises next is, what part of section 15C should be repeated in section 56A? Section 15C requires the following conditions to be fulfilled :—

1. The profits must be *derived* from an industrial undertaking to which the section applies (sub-section (1)).
2. The profits should not exceed 6 per cent per annum on the capital employed in the undertaking (sub-section (1)).
3. The undertaking must not be formed by the splitting up or reconstruction of a business already in existence (sub-section (2), item (i)).
4. The undertaking must not be formed by the transfer of a building etc. used in a business carried on before the 1st April, 1948 (sub-section (2), item (i)).

¹ See notes to clause 104.

- 5 The undertaking must begin to manufacture articles in India within 13 years from the 1st April, 1948 or extended period when allowed by the Central Government (sub-section (2), item (ii))
- 6 The undertaking must employ a certain number of workers (sub-section (2), item (iii))
- 7 The exemption must not have been withdrawn by the Central Government (sub-section (2), item (iii) Proviso)
- 8 The exemption is applicable only to the assessment for the previous year in which manufacture commenced and for the four immediately succeeding assessment years (sub-section (6))

Taking these conditions one by one, it seems that condition No 1, is applicable for section 56A only to the extent to which it is introductory, as intended to draw attention to S 15C(2) (Section 56A does not require that only dividends attributable to profits derived from a particular undertaking should be exempt) Condition No 2 cannot be applied for S 56A, as the intention of section 56A is to confer an exemption in addition to that enjoyed by shareholders under section 15C(4) Condition No 3 is applicable for section 56A, but since section 56A, sub-section (1), item (ii) speaks of "the Indian Company", the condition has to be translated in terms of the Indian Company Condition No 4 is applicable, but the mention of the 1st April 1948 is irrelevant for the purpose of section 56A, which seeks to give a permanent exemption Condition No 5, being of a temporary nature, cannot be applied for section 56A Condition No 6 is applicable Regarding condition No 7, the intention probably seems to be to disregard any such withdrawal of exemption and to apply section 56A to all companies otherwise governed by the applicable part of section 15C, even if in a particular case the exemption under section 15C has been withdrawn Condition No 8, being of a temporary nature, cannot be applied to section 56A, which does not confine the exemption to a particular period

In the draft, therefore, the ingredients of section 15C have been embodied only to the extent indicated in the discussion above

As already stated, the applicable conditions of section 15C(2) have, in the draft, been treated as conditions to be fulfilled by the Indian Company and not by its industrial undertaking Consequential changes have been made in language

Sub-clause (1)—Item (i)—The cumbersome list of items has been removed to a separate sub-clause, thus simplifying the language of section 56A(1)(i)

Item (ii)—The general notes at the beginning above may be persued

Sub-clause (2)—does not need any comments.

Sub-clause (3)—The commodities in question have been referred as “items”—a word used in the existing section 56A(2) at the end. No other comments are needed.

Notes to clause 109.

No detailed comments are needed.

Notes to clause 110.

Strictly speaking this exemption should in the case of supertax be treated as an exclusion from total income, but in view of section 17(3) it had to be treated as a case of rebate¹.

Notes to clause 111.

This clause states the rule in existing section 14(2) (aa) as read with the Proviso.

The exemption has, for purposes of super-tax, to be treated as a case of rebate [S. 17(3)], though similar exemptions have been treated, for super-tax, as exclusions from total income¹.

Notes to clause 112.

The clause does not need any detailed comments. The words “in relation to” will indicate that the substance of the relief is the same, both in income-tax and in super-tax.

Notes to clause 113.

General—Existing section 23A, even after its amendment by the Finance (No. 2) Act 1957, is lengthy and is difficult to follow. An attempt has been made to break up the section and distribute its provisions in several clauses. The scheme adopted is to begin with the operative provisions and then to take up provisions in the nature of interpretation.

Clause 113—This reproduces S. 23A(1). Simplification of the provision has been sought to be achieved by splitting it up into two sub-sections, so that the main provision appears separate from the requirement imposing a duty on the Income-tax Officer to consider certain criteria.

The lengthy expression “total income..... as reduced by”, which is followed by a list of the deductions, has been replaced by the shorter expression “distributable income” (defined separately)². This has enabled the simplification of the various clauses of S. 23A(2) also.

¹ Cf. notes to draft clause 104.

² See draft clause 118.

The lengthy expression a company whose business consists in the dealing in or holding of investments has been replaced by investment company (defined separately) which has simplified the draft for Explanation 2 Clause (1) also

The changes made by the Finance Act 1958 have been given effect to

S 23A in effect taxes undistributed profits and is thus aimed at a maximum distribution of profits. It is difficult to sustain side by side with this section the provision which has been included in recent Finance Acts for taxing excessive distribution of profits. The provision in the Finance Act aims at encouraging the minimum distribution of profits and goes ill with section 23A which encourages the maximum distribution

Even the Finance (No 2) Act 1957 First Schedule paragraph D second Proviso clause (c) though it does not directly tax an excessive distribution is subject to this criticism because on that part of the dividends which exceeds 10 per cent of the paid up capital there is an direct tax expressed as a reduction of the rebate otherwise admissible. The indirect tax goes on increasing with the percentage of the dividend in relation to the capital. The higher the dividend the lesser the rebate and therefore the higher the tax.

In other words while the Finance Act provides on acts as an incentive to smaller distribution S 23A acts as an incentive to higher distribution of profits. It would be desirable to drop the system of taxing excessive distribution of profits introduced in recent Finance Acts at least in relation to companies to which section 23A applies

Notes to clause 114

The changes made are verbal and consequential on the shorter expressions distributable income and investment company adopted in the draft for S 23(1)

Notes to clause 115

No detailed comments are needed

Notes to clause 116

The existing provision has been split up into sub-clauses (a) and (b) for simplicity

Notes to clause 117

Sub-clause (1)—In paragraph (b) the negative words not a private company have been replaced by the positive words a public company. While the definition of

public company in the Companies Act is itself a negative one, it seems unnecessary to repeat that negative concept in the provision under discussion.

In paragraph (b) item (iii), the existing words "less than six persons" have been replaced by "five or less persons" in order to help the understanding of the provision by removing the negative. It must, of course, be noted that the provision, even as redrafted, retains the negative words "at no time during the previous year.....". The reason is, that the provision is intended to be satisfied in respect of each and every block of share capital; the position regarding holding of shares should be such that any five or less persons cannot have the control of any bunch of shares carrying more than 50 per cent of the total voting power.

The method of computing the number of persons has been included in a separate sub-clause for the sake of simplicity.

Sub-clause (2)—As already stated, the method of computing the number of persons has been separately included in this sub-clause. The provision has been split up into paragraphs (a) and (b), and an Explanation, for simplicity.

Notes to clause 118.

The expression "distributable income" has been coined and used in the draft for the operative portion of S. 23A, sub-section (1) and also in the draft for sub-section (2). The expression has been defined in this clause. The only change of substance made is the addition of sub-clause (c) whereunder amounts paid as donations and exempt from tax under existing section 15B will be excluded from the distributable income. This has already been the practice under a decision of the Central Government.

Notes to clause 119.

This clause seeks to define "investment company", an expression used in the draft at several places as a short substitute for the lengthy expression "company whose business consists" etc.

Notes to clause 120.

Though the existing definition of "statutory percentage" is complex, the complexity is due to the complicated nature of the provision in substance. Improvements in form would not have reduced the complexity and have not, therefore, been attempted, except that in item (iv), in sub-clause (a), the words at present appearing at the end "whichever of those is greater" have, in the draft, been shifted above and expressed as "the greater of the following".

CHAPTER XII

DETERMINATION OF TAX IN CERTAIN SPECIAL CASES

Notes to clause 121

The main provision of existing section 17(2) has been embodied here with verbal charges italicised, to state the rule in an exact and accurate manner

Notes to clause 122

The clause is new. Reference is made to the provision contained in existing section 58G to make the Chapter self contained

Notes to clause 123

General—Existing section 10(5A) provides for two things. The earlier portion deems compensation etc paid to managing agent etc to be profits and gains of business, and has been incorporated in the draft chapter on computation of total income. The latter portion gives the method of computing tax on such income and has been incorporated here.

Sub clause (1)—While the tax on the compensation etc is to be dealt with in the special manner provided for by the section, the tax on the remaining part of the income has to be calculated at the (average) rate applicable to the whole of the total income. This has been made clear in the draft, by stating the position separately for the two kinds of income.

The Explanation is new and is intended to deal with a case where a firm though assessed as an unregistered firm in the assessment year, was assessed as a registered firm in any of the three preceding assessment years.

Sub-clause (2)—is new. It seems desirable to provide for a rebate to the partner of a registered firm where the firm is in receipt of the compensation etc in question. There is no such provision at present.

Notes to clause 124

The provisions of section 17(1) have, in the draft, been put into four sub-sections for simplicity. These deal with—

- (i) the basic provision,
- (ii) the option given to the non-resident, and the time-limit therefor,
- (iii) the consequences of the option, and
- (iv) power to extend the time-limit for the option.

When using the expression "tax", the words "including" have been omitted as the definition of tax, in *under-tax*

Sub-clause (1)—does not need any detailed comments.

Sub-clause (2)—The opening portion of existing section 17, sub-section (1), 1st Proviso, has been simplified by stating directly the date 30th June, and omitting the reference to the assessment year ending on 31st March, 1952, which has become obsolete.

Sub-clauses (3) & (4)—It has been made clear that any option exercised under the present Act will continue to have effect for the purposes of the new Act also. Consequential changes have been made.

Notes to clause 125.

The substance of existing section 17(6) has been incorporated in this clause.

The process of calculating tax has been split up in two sub-clauses, for simplicity.

The existing words in S. 17(6)(ii), "on the whole, income-tax equal to the amount which bears to the income-tax" etc. have, in the draft, been replaced by a mathematical formula, to make the provision easy to understand.

It is presumed that, in calculating the income-tax on the amount of capital gains, the total income is to be reduced for purposes of rate also. Hence, when explaining the symbol *Y*, the words "had the total income so reduced been his total income" have been added.

The proviso to section 17(6)(ii) has in the draft been split up into two clauses.

Clause (i) states the minimum *amount* that can be taxed.

Clause (ii) embodies the rule relating to the maximum *tax* to be charged. Where the capital gains do not exceed five thousand rupees, the tax will obviously be zero when this clause is applied (see the words "if any"), and it becomes unnecessary to deal specifically with such a case, as has been done in the existing section.

Suggestion—It would be logical if a provision is made in the Act to the effect that capital gains are completely excluded from the total income for the purpose of super-tax. This would simplify the form of the provision contained in existing section 17, sub-sections (6) and (7).

Notes to clause 126.

Section 17(7), even after its amendment by the Finance (No. 3) Act, 1956, refers to super-tax only and is not easy to understand.

The draft seeks to state the position clearly. The reduction of the total income by the amount of capital gains is presumably effective for determining the rate also, as is shown by the words "calculated on its total income" even in the existing section. This has been stated more clearly in the draft in sub-clause (b).

CHAPTER XII

DETERMINATION OF TAX IN CERTAIN SPECIAL CASES

Notes to clause 121.

The main provision of existing section 17(2) has been embodied here, with verbal charges italicised, to state the rule in an exact and accurate manner

Notes to clause 122

The clause is new. Reference is made to the provision contained in existing section 58G to make the Chapter self-contained

Notes to clause 123

General—Existing section 10(5A) provides for two things. The earlier portion deems compensation etc. paid to managing agent etc. to be profits and gains of business, and has been incorporated in the draft chapter on computation of total income. The latter portion gives the method of computing tax on such income and has been incorporated here.

Sub-clause (1)—While the tax on the compensation etc. is to be dealt with in the special manner provided for by the section, the tax on the remaining part of the income has to be calculated at the (average) rate applicable to the whole of the total income. This has been made clear in the draft, by stating the position separately for the two kinds of income.

The Explanation is new and is intended to deal with a case where a firm, though assessed as an unregistered firm in the assessment year, was assessed as a registered firm in any of the three preceding assessment years.

Sub-clause (2)—is new. It seems desirable to provide for a rebate to the partner of a registered firm where the firm is in receipt of the compensation etc. in question. There is no such provision at present.

Notes to clause 124

The provisions of section 17(1) have, in the draft, been put into four sub-sections, for simplicity. These deal with—

- (i) the basic provision,
- (ii) the option given to the non-resident, and the time-limit therefor,
- (iii) the consequences of the option, and
- (iv) power to extend the time-limit for the option.

When using the expression "tax", the words "including super-tax" have been omitted, as the definition of tax, in the draft, includes super-tax.

Sub-clause (1)—does not need any detailed comments.

Sub-clause (2)—The opening portion of existing section 17, sub-section (1), 1st Proviso, has been simplified by stating directly the date 30th June, and omitting the reference to the assessment year ending on 31st March, 1952, which has become obsolete.

Sub-clauses (3) & (4)—It has been made clear that any option exercised under the present Act will continue to have effect for the purposes of the new Act also. Consequential changes have been made.

Notes to clause 125.

The substance of existing section 17(6) has been incorporated in this clause.

The process of calculating tax has been split up in two sub-clauses, for simplicity.

The existing words in S. 17(6)(ii), "on the whole income-tax equal to the amount which bears to the income-tax" etc. have, in the draft, been replaced by a mathematical formula, to make the provision easy to understand.

It is presumed that, in calculating the income-tax on the amount of capital gains, the total income is to be reduced for purposes of rate also. Hence, when explaining the symbol Y , the words "had the total income so reduced been his total income" have been added.

The proviso to section 17(6)(ii) has in the draft been split up into two clauses.

Clause (i) states the minimum *amount* that can be *taxed*.

Clause (ii) embodies the rule relating to the maximum *tax* to be charged. Where the capital gains do not exceed five thousand rupees, the tax will obviously be zero when this clause is applied (see the words "if any"), and it becomes unnecessary to deal specifically with such a case, as has been done in the existing section.

Suggestion—It would be logical if a provision is made in the Act to the effect that capital gains are completely excluded from the total income for the purpose of super-tax. This would simplify the form of the provision contained in existing section 17, sub-sections (6) and (7).

Notes to clause 126.

Section 17(7), even after its amendment by the Finance (No. 3) Act, 1956, refers to super-tax only and is not easy to understand.

The draft seeks to state the position clearly. The reduction of the total income by the amount of capital gains is presumably effective for determining the rate also, as is shown by the words "calculated on its total income" even in the existing section. This has been stated more clearly in the draft in sub-clause (b).

CHAPTER XIII

INCOME TAX AUTHORITIES

Notes to clause 127

No comments are needed

Notes to clause 128

General—Existing section 5 is very lengthy and does not deal systematically with the various matters relating to Income-tax authorities. The section has, in the draft been split up into a number of clauses and the clauses have been so arranged that each topic is dealt with separately in the following order —

- (i) appointment,
- (ii) control
- (iii) jurisdiction
- (iv) powers and duties of the Income-tax authorities

Clause 128—The scheme adopted is to deal in separate sub clauses with appointments by the Central Government appointments by the Commissioner and appointments of ministerial staff by Income-tax authorities

Under existing section 5(3) latter part the appointment to class II Income-tax Officers and Inspectors of Income-tax is made by the Commissioner, but the number is to be sanctioned by the Central Government. This is the statutory provision, but in administrative practice the sanction of all these posts can be made by the Commissioner. The language has therefore, been altered to conform to administrative practice, *vide* sub-clause (2)

Notes to clause 129

Provisions relating to control of Income-tax authorities have been brought together in this clause

Sub-clause (1)—needs no comments

Sub clauses (2) and (3)—The expression existing in section 5(7) 'For the purposes of this Act' appears unnecessary and has been omitted

Sub clause (4)—It has been made clear that an Inspector of Income tax is subordinate not only to the authority under whom he is appointed to work but also to any superior authority

The Explanation is new and is intended to conform to the administrative set-up of the Directorate, under which the Deputy Director is an Assistant Commissioner and the Assistant Director is an I.T.O.

Notes to clause 130.

Provisions concerning instructions to subordinate authorities have been brought together in this clause. Since such instructions sometimes affect the public as a whole, it has been provided that instructions of a general nature should be published.

Sub-clause (2) embodies the existing provisions in section 5, sub-section (7B) earlier part, but it is for consideration whether this provision introduced in 1953 should be retained.

Notes to clause 131.

General—All provisions regarding the jurisdiction of Income-tax authorities have been brought together in this section. The only changes that need comments are the following :—

Sub-clause (3)—Paragraph (b) is new and is intended to give recognition to the existing practice. The practice is, in a sense, impliedly authorised by existing section 5(6).

Such transfers from one Appellate Assistant Commissioner to another are usually made wholesale in accordance with the volume of work before each Appellate Assistant Commissioner, and therefore, it is not practicable to give notice to the individual assessee whose cases are to be transferred. Hence, this sub-clause does not prescribe the requirement of notice, unlike section 5(7A) as embodied in the draft.

Sub-clause (5)—Existing section 5(5), latter part, authorises the Commissioner to direct that the powers of the Income-tax Officer shall be exercised by the Inspecting Assistant Commissioner in respect of any specified case or class of cases. To this, an addition has been made, in the draft, authorising such orders in respect of any specified person or classes of persons also.

Sub-clause (7)—Existing section 5(6), last line, provides that when the Central Board of Revenue empowers any particular Income-tax authority to perform functions thereunder, the functions shall cease to be performed by the other authorities "appointed under sub-sections (2), and (3)".

Now, so far as the reference to sub-section (2) is concerned, it is to be construed as a reference, not to the opening line of section 5(2), but to the second sentence beginning with.

"and they shall perform their functions.....".

The mere appointment of a person to a post is not relevant; what is important is, the allotment of functions.

This portion of section 5(2) has, in the draft, been embodied in sub-clause (2), and therefore draft sub-clause (7) makes a reference to draft sub-clause (2)

So far as the reference to section 5(3) is concerned, it appears to be inappropriate, because that sub-section does not deal with allotment of functions but only with the appointment. Hence that reference has been omitted

Existing section 5(4), latter part, and section 5(5), earlier part, also deal with allotment of functions and, therefore, the corresponding sub-clauses (3) and (4) have also been referred to in the draft sub-clause under discussion

The second part of the draft sub-clause is new and makes a provision which is obviously desirable. Existing section 5, sub-section (7A) main para, latter part, may be compared

Sub clause (8)—This is intended to make it clear that where the Inspecting Assistant Commissioner performs the functions of the Income-tax Officer, provisions requiring his sanction etc cease to have any effect. The position regarding appeals has also been stated in clear terms. The existing provision in section 5(5), latter half, concluding portion, enacts that references to the Income-tax Officer and the Appellate Assistant Commissioner shall be deemed to be references to the Inspecting Assistant Commissioner and the Commissioner respectively. That has been preserved in draft sub-clause (5), but draft sub-clause (8) attempts merely an application of that principle for certain important matters

Notes to clause 132

Sub-clause (1)—The words "also subordinate to him" have been added for the sake of precision. It has also been made clear that the transferring authority must record its reasons in writing

Sub clauses (2) and (3)—Sub-clause (2) is new and gives effect to the following observations of the Supreme Court in a centre case¹—

"We may, however, before we leave this topic, observe that it would be prudent if the principles of natural justice are followed, where circumstances permit, before any order of transfer under section 5(7A) of the Act is made by the Commissioner of Income-tax or the Central Board of Revenue as the case may be, and notice is given to the party affected and he is afforded a reasonable opportunity of representing his views on the question and the reasons of the order are reduced, however briefly, in writing"

¹ *Panna Lal Biny Ray V Union of India* (1957) 31 ITR 565 589 590 AIR 1957, S. C. 397, 410, para 36

The Supreme Court pointed out that section 64(3) requires an opportunity to be given to the assessee of representing his views when any question as to the place of assessment is to be determined.

Under draft sub-clause (3), the transferring authority is given the power, in special cases, to dispense with an opportunity to the assessee before the order is passed. But it has been provided that the assessee shall in such cases have a right to move for a retransfer within one month.

Explanation.—This embodies the existing Explanation, which was inserted to get the situation created by a decision of the Supreme Court¹ whereby a whole-sale transfer of cases, without reference to the year of assessment, was held to be illegal. After the Explanation was inserted, the question of its validity came up before the Supreme Court in a later case². The Supreme Court upheld the validity of the Explanation and explained its scope by pointing out that when a case of any particular assessee pending before one Income-tax Officer is transferred to another Income-tax Officer under section 5(7A), then—

- (a) all proceedings pending against him in respect of the same year as also previous years are meant to be transferred simultaneously; and
- (b) all proceedings which may be commenced after the date of transfer in respect of any year whatever are also included therein.

The result is that the transferee Income-tax Officer would be in a position to continue pending proceedings and also to institute fresh proceedings.

This aspect of the Explanation, namely, that it amounts to a transfer of proceedings for past assessment years also and that its inclusive part applies to proceedings for any assessment year whether past or future, has in the draft been brought out by suitable amendments (though the existing provision is clear enough on this point).

Incidentally, it will be noticed that the definition of "case" contained in the Explanation under discussion is confined to section 5(7A). Where the whole-sale transfer of cases, past and future, of an assessee is to be done under section 5, sub-section (2), latter part, or section 5, sub-section (5) latter part, that can be done, not by calling it a transfer of cases but by treating it as a transfer of jurisdiction in respect of "persons". It may be noted here that Section 5, sub-section (5), latter part, has, in the draft, been amended so as to add a reference to specified person.

¹ *Bidi Supply Co. V. Union of India* (1956), S.C.R. 267-A.R. 1956, S. C. 479, 484 (1956), 29 I.T.R. 717.

² *Panna Lal Binj Raj V. Union of India* (1957), 31 I.T.R. 565-A.I.R. 1957, S.C. 397, 411.

Notes to clause 133

No comments are needed

Notes to clause 134

This clause is new. Some doubt has been felt as to the Income-tax authority which is entitled to prosecute or defend an appeal in the High Court etc whenever the assessee's case is transferred from one authority to another. For example, when one Commissioner files an appeal, and the case of the assessee is transferred to the jurisdiction of another Commissioner, the question arises whether the transferee Commissioner can continue the appeal. Provision has, therefore been made to make it clear that the authority for the time being seized of the case would be the person competent to initiate or continue such proceedings.

For the sake of simplicity the cases of Commissioner and of the Income-tax Officer have been dealt with in separate sub-clauses.

The principle underlying the provision is not new. Nor is it confined to the particular provisions referred to in the draft clauses, it should be applicable for all provisions of the Act. But, since difficulties have been felt only in regard to certain provisions the draft clause is confined to these provisions. The provisions of existing section 5, sub-section (7C) cover cases where a proceeding is pending before an Income-tax authority who is transferred.

Notes to clause 135

General—This clause corresponds to section 64 of the existing Act. The question whether the section confers a right on the assessee has come up before the courts more than once and has now been settled once for all by the Supreme Court.¹ The discussion in the case just cited makes it clear that it is too late in the day to say that there is no right to be assessed by the Income-tax Officer of a particular area. The earlier decision of the Supreme Court, holding that the benefit conferred on the assessee by sub-sections (1) and (2) of the section 64 is to be regarded as a right, has been reinforced by the later decision² referred to above.

The marginal note of the section 'place of assessment' is, however, slightly misleading, because the section does not deal with the place where the assessment is actually made but with the Income-tax Officer having jurisdiction. The marginal note, has therefore been altered accordingly.

¹ *Pannalal Bhai Raj V Union of India* A.I.R. 1957, S. C. 397, 406, Paras 20-22 (1957) 31 I.T.R. 565

² *Bidi Supply C V Union of India* (1956) S. C. R. 267, 276, A.I.R. 1956, S. C. 479 483 (1956) 29 I.T.R. 717

Sub-clause (1)—does not need any comments.

Sub-clause (2)—does not need any comments.

Sub-clause (3)—In the proviso, the words “representing his views” have been replaced by “being heard in respect of the question” which are more appropriate; it has been also made clear that the opportunity to be afforded to the assessee should be “reasonable”.

The second and third provisos to existing section 64(3) have, for simplicity, been dealt with in separate sub-clauses.

Sub-clause (4)—Slight verbal changes have been made to secure simplicity and clarity.

Sub-clause (5)—does not need any comments.

Sub-clause (6)—embodies existing section 64(4), which is obviously intended to make it clear that even where the assessee resides or carries on business within the jurisdiction of another Income-tax Officer, an Income-tax Officer may exercise powers in respect of income of such assessee accruing or arising within his jurisdiction.

Sub-clause (7)—The only change made is the omission of words that were intended to emphasise the retrospective operation of the provision.

Notes to clause 136.

Existing section 37 has, in the draft, been split up into two. Portions relating to powers of a court that can be exercised by the authorities mentioned in the section have been dealt with in this clause, while powers of search and seizure have been dealt with in the next clause.

Sub-clause (1)—does not need any comments.

Sub-clause (2)—is new and has been added to indicate the procedure to be followed in exercising the powers.

Sub-clause (3)—needs no comments.

Sub-clause (4)—is new. The existing section does not contain a provision entitling a person producing a document to apply for return of the same. To make the matter clear, this sub-clause has been added. Compare Order 13, Rule 9 of the Code of Civil Procedure.

It may be noted that section 37(3), proviso (b) does not in so many words deal with the return of documents. Moreover, it is confined to Income-tax Officers. The sub-clause under discussion will cover all cases, including documents retained by an Income-tax Officer.

Notes to clause 137

Item (ii)—The words 'have them removed to his office' have been added to deal with cases where the books are voluminous and the Income-tax Officer cannot examine them in the premises

Item (iii)—The words "cause to be made" have been added to make it clear that the Income-tax Officer can entrust to an Inspector or ministerial staff the work of taking copies or extracts from the books and documents in question

Item (iv)—The existing provision relates to a note or an inventory of any 'other' articles or things found in the course of search, this would exclude books and documents which are referred to in the earlier item. Since, however occasion may arise for making a note of a book or document (without actually seizing it), the word "other" has been omitted in the draft

Notes to clause 138

Sub-clauses (1) and (2)—Existing section 38 (1) has been divided into two sub-clauses, to make the provisions clear

What the 'return' relates to is only names and addresses, Cf existing S 38(1) & (2) That has been made clear in the draft. In the case of partners, however, information regarding their shares may be useful and that has been added in the draft

The expression "Assistant Commissioner" has been substituted by "Appellate Assistant Commissioner or Inspecting Assistant Commissioner", since these are the expressions used in the Act

In sub-clause (2), instead of "adult male member", the word 'members' has been substituted for brevity

Notes to clause 139

It has been made clear that the person authorised for the purpose of this section should be subordinate to the officer giving the authority. Private persons should not be authorised under this section

Notes to clause 140

The latter part of section 5 sub-section (7B) has been reproduced here. Presumably, the "enquiries" referred to here are the enquiries under sections 37, 38, 39 etc

Notes to clause 141

Sub-clause (1)—The existing section provides that the court shall not be entitled to require "any public servant" to produce the return, accounts etc to be treated as confidential under this section. There is a conflict of decisions as to whether these words are to be read literally

as prohibiting *any* public servant whatsoever from making a disclosure, or whether the prohibition is confined to the public servants before whom the documents etc. are produced under the Act. The Bombay High Court¹ has taken the view that the section is confined to public servants of the Income-tax Department, while the Punjab High Court² has taken the contrary view. Though the wide language of this section might justify the Punjab view, expediency demands that the narrow view taken by the Bombay High Court should be adopted. It does not appear to be desirable to prohibit other public servants from making such disclosures, and draft sub-clause (5) of the clause under discussion therefore gives a restricted definition of the expression "public servant".

Sub-clause (2).—Existing section 54(2) imposes a penalty on a public servant making a disclosure of the particulars treated as confidential. What the sub-section achieves is—

- (i) making such disclosure an offence, and
- (ii) imposing penalty for the offence.

The earlier part of the sub-section really creates the offence, and has been reproduced in this sub-clause. The penalty portion has been transferred to the Chapter on "Offences and prosecutions".

Section 54(5) has also been transferred to the Chapter on "Offences and prosecutions".

Sub-clause (3).—The various paragraphs of this sub-clause embody existing provisions and do not need any comments, except the following :—

Paragraph (a).—The existing provision contains the words "prosecution under the Indian Penal Code". A "prosecution" is, really speaking, for an offence under a law and therefore the words "for any offence" have been added.

Paragraph (b).—Reference to the Taxation on Income (Investigation Commission) Act, 1947 has been omitted as obsolete.

Paragraph (c).—This is new. Where an Income-tax authority makes a best judgment assesment under section 23 (4), he usually relies on the figures of profits made by other persons in a similar business, as given in the income-tax returns of those other persons. In fairness, the information contained in the returns of such other persons should be disclosed to the assessee before making a best judgment assesment³. This paragraph in question has, therefore, been added to authorise such disclosure. Suitable

¹ *Emperor V. Osman Chetani* (1942) 10 I.T.R. 429; I.I.R. 1942 Bombay 767; A. I. R. 1942 Bom. 289.

² *I. T. O. Jullundur V. The State* (1950) 18 I. T. R. 388; A.I.R. 1950 East Punjab 305.

³ *Cf. Dhakeshwari Cotton Mills V. C. I. T.* (1954) 26 I. T. R. 775 S. C.

words have been used in order to ensure that the assessee to whom any information is disclosed under this paragraph is not thereby enabled to trace the other assessee's whose figures are disclosed in such information

Paragraph (f)—The privilege conferred by section 54 is sometimes abused by the assessee by claiming it against courts in which proceedings are pending for or against him. For example, when the assessee's accounts contain an entry adverse to his case in a civil suit, the assessee often refuses to produce the accounts before the court and takes shelter under this section, saying that the accounts are lying with the Income-tax Department. This cannot be supported by any notions of justice or fairness. Paragraph (f) has, therefore, been added to empower the court to enforce production of the accounts in such cases.

Registered documents of which copies can be obtained under the Registration Act, or certain documents prepared under the Companies Act (like balance sheet, audit report, etc.) have also been mentioned in this para. Such documents need not be treated as confidential, since they are virtually public documents.

Paragraph (j)—The word "lawyer" has been replaced by the words "legal practitioner" which are more appropriate.

Paragraph (k)—Existing section 54(3) (h) is obviously meant for cases where an officer of the Income-tax Department, detecting an unstamped document, desires to communicate that fact to the stamp authorities. His power to 'impound' the document "occasions" the further transmission of the document to the Collector under the Stamp Act. The "public servant" referred to in the provision is, therefore, the Income-tax authority impounding and transmitting document, not the stamp authority receiving it. (The stamp authority receiving the document, does not "disclose" any document.) It is the Income-tax authority which makes this disclosure subsequent to the impounding of the document. Slight verbal changes have been made to bring out this intention.

Paragraph (l)—Existing section 54(3) (i) refers to officers of the United Kingdom or any part of His Majesty's Dominion. But as section 49A authorises an agreement for a double taxation relief with any country outside India the language of this provision has been brought into conformity with that position.

Paragraph (n)—This is new and is intended to authorise the disclosure of information required in connection with levy or realization of other central taxes, for example, estate duty, wealth tax, expenditure tax etc. Assistance has been taken, in drafting the provision, from existing section 54(3) (j).

To a certain extent, this added provision might overlap existing section 54(3) (k), dealing with customs and excise duties. But the language of the latter provision is slightly different in two respects :

(i) existing sub-clause (k) refers to "any authority exercising powers" and not to any Government Officers.

(ii) existing sub-clause (k) authorises the disclosure for enabling the exercise of any powers under the Act (for example, confiscation of goods) and is not confined to levy or realization of tax.

For these reasons, clause (k) has been retained in the draft and reproduced in paragraph (o).

Paragraph (o).—See notes above under paragraph (n).

Sub-clause (4).—does not need any comments.

Existing section 54(5) has, as already stated, been transferred to the Chapter on "Prosecutions".

Sub-clause (5).—See notes under sub-clause (1) above.

Notes to clause 142.

This is new and is intended to make it clear that the privilege conferred by section 54 can be waived by the assessee.

CHAPTER XIV

PROCEDURE FOR ASSESSMENT

Notes to clause 143.

General.—The provisions relating to procedure for assessment have been arranged in this Chapter in proper sequence. The proceedings for assessment begin with the notice under section 22 calling for a return, which may be followed by the provisional assessment, enquiry by the Income-tax Officer and the regular assessment. Reopening of the assessment at the instance of the assessee, or reassessment at the instance of the Income-tax Officer under existing section 34, are subsequent proceedings.

The sections relating to assessment have been placed in this order in the Chapter. Amendment by way of rectification of mistakes is dealt with next, followed by the notice of demand under existing section 29.

The procedure for assessment proper having been dealt with in the earlier half of the Chapter, the latter half of the Chapter goes on to embody provisions regarding incidental matters, or matters which are of minor importance (e.g., miscellaneous information and certificates).

Sub-clause (1) —The following changes have been made to improve the language of the section in precision and clarity —

An important departure has been made from the existing Act by providing for an automatic submission of return of income by all persons who are assessable under the Act. Existing section 22 (1) requires the Income-tax Officer to issue a general notice calling for the submission of such returns. This provision entails a lot of expense and labour to the department, since a notice has to be issued in identical terms by each Income-tax Officer. Further, the provision has no parallel in the taxation statutes of other countries which provide for the primary obligation of the taxpayer to send a return of income by the prescribed date. Lastly, recent taxation statutes in India, for example, the Estate Duty Act, the Wealth Tax Act and the Expenditure Tax Act contemplate the submission of a return for the purposes of those Acts without notice by the Income-tax Officer. It seems, therefore, desirable to make the provision more rational on the lines of the other taxation statutes just now referred to.

Apart from this important change, the following changes have also been made for precision and clarity—

- (i) it has been made clear that the return of income is to be submitted in the financial year,
- (ii) at present it is doubtful whether a person is liable to make a voluntary return of the income of any other person in respect of which he is assessable. There are several provisions in the Act, such as sections 40, 41, 42 etc, which make one person assessable in respect of the income of another. This lacuna has been removed by the addition of suitable words,
- (iii) the notice under existing section 22 (1) usually provides that the return should be furnished before the expiry of 65 days from the date of publication of the notice. This leaves the date indefinite until the date of publication of the notice is ascertained. It has been provided therefore in the draft, that the return should be furnished on or before the 30th day of June,
- (iv) a proviso has been added to the effect that a person who has already submitted a return in response to an individual notice under sub-section (2) need not furnish a return under sub-section (1),
- (v) the existing requirement that the return should be a return of "total income" and "total world income" etc, has been replaced by the simple requirement that it should be a return of income in the prescribed form.

Incidentally, it is suggested that it would be appropriate to prescribe a separate form of return in the case of persons who have incurred losses in business which they would be entitled to carry forward.

Paragraph (b) of the sub-clause makes it clear that where a return is sent to the wrong Income-tax Officer, he should forward it to the Income-tax Officer having jurisdiction.

Sub-clause (2).—The existing section 22 (2) says that the notice will require the assessee to furnish the return "within such period, not being less than 30 days, as may be specified in the notice". The words "not being less than" create a controversy as to whether a direction to furnish the return "within 30 days" would meet the requirement laid down in the section. To prevent all confusion, the draft sub-clause provides that the return is to be furnished within 30 days from the date of service of the notice.

A proviso has been added to the effect that the notice should be issued before the end of the relevant assessment year. This interpretation of the section is well-accepted even now.

Other drafting changes are on the same lines as those made in sub-section (1).

Sub-clause (3).—The date on or before which the return of loss should be filed has been specifically mentioned in the draft sub-clause, on the lines of the draft for sub-section (1).

The return is meant for losses sustained in the previous year, and hence the word "previous" has been inserted before the word "year" in the beginning of this sub-clause.

The requirement that if the return is not filed, the loss cannot be carried forward, contained in the middle of the existing section 22 (2A), has already been incorporated in the Chapter on aggregation of income and set-off of losses.

Sub-clause (4).—This does not require any comments.

Some difficulty has been caused by existing 22 (3) in cases where the assessee files a return on the last day of the period within which the assessment could be completed. It has been held¹ that if the department takes no action at all for the issue of a notice under section 22, and allows time to pass and permits the assessee to make a voluntary return under section 22 (3), the income of the assessee must be assessed as laid down in section 23 and it is not open to the department to proceed under section 34. This would lead to the complication that even if the return of income under section 22 (3) is filed on the last day on which the assessment could be completed, the department must complete the assessment without further investigation. To remove this difficulty, an amendment is proposed

¹ *Ranchhod Das V. C. I. T.* (1954) 26 I.T.R. 105 (Bom.).

in the draft clause corresponding to existing section 34 (3), main para, whereby the department will be allowed at least one year from the date on which a return under section 22(3) is filed by the assessee. This will meet the difficulty brought to light by the case cited above¹

Existing section 22 (4) has been removed and placed later as a separate section, its present place in the middle of the provision relating to return interrupts the description of the substantive provisions dealing with the various classes of returns

Sub-clause (5) —Does not need any comments.

Notes to clause 144

This is new. The existing Act is silent as regards the person who should sign a return of income. The draft clause is intended to state the position comprehensively in respect of the various kinds of assesseees

Notes to clause 145

Sub-clause (1) —Does not need any comments

Sub-clause (2) —The provision that due effect should be given to certain allowances and losses has been removed in separate sub-section, for the sake of clarity

Sub-clause (3) —Does not need any comments

Sub-clause (4) —Existing section 23B, sub-section (3) provides for the assessment of a firm as an unregistered firm unless the firm fulfils the conditions notified by the Central Government. In order to make the provision self-contained, the conditions imposed by the notification have been incorporated in the section. The words "as if it were an unregistered firm" in the existing provision are not happy, since they would not apparently cover a case where the firm is in fact unregistered. The simple phrase "as an unregistered firm" has, therefore, been substituted in their place

Sub-sections (5) and (6) —of existing section 23B have been transferred to the Chapter on Collection of tax.

Sub-clauses (5), (6) and (7) —These do not need any comments

Notes to clause 146

Existing section 22 (4), dealing with the enquiry which the Income-tax Officer may make before assessment, has been embodied in this clause

Sub-clause (1) —The words "for the purpose of making an assessment under this Act" have been inserted in the beginning to define the scope and object of the enquiry

¹ *Raschid Das V C I T* (1934) 26 I T R. 103 (Bom.)

It has been made clear that after obtaining the previous approval of the Commissioner, the Income-tax Officer may call upon the assessee to furnish a statement of assets and liabilities. The requirement of approval will prevent undue hardship to assesseees.

Sub-clause (2)—This is new, and enunciates a well established proposition. It is intended to make it clear that an Income-tax Officer may make such enquiries as he considers necessary. It will be particularly useful in cases where a “best judgment assessment” is proposed to be made.

Sub-clause (3)—This is new. It has been held by the Supreme Court¹ that before any material is used against any assessee, he should have an opportunity to rebut the same. This principle has been codified in this draft sub-clause. An exception has been made for cases where an assessment is to be made under existing section, 23 (4), since it is an *ex-parte* assessment.

Notes to clauses 147, 148 and 149.

General—Existing section 23 deals with the three possible situations that may arise when an assessee is called upon to make a return of income—(1) the return is made by the assessee, and accepted by the Income-tax Officer; (2) the return is made by the assessee, but is not accepted by the Income-tax Officer, who wants to make further enquiry; (3) no return is made.

Slight verbal additions have been made in the opening portion of sub-sections (1) and (2) to bring out the fact that these three situations are being dealt with separately by the section.

Clause 147, Sub-clause (1)—Apart from verbal additions already referred to, the only change made is the addition of a reference to “loss” of the assessee so that the assessment would determine the amount of loss which can be carried forward under existing section 24 (2) read with existing section 22 (2A). It has also been made clear that if any sum is to be refunded, that should also be mentioned in the assessment order.

Sub-clause (2)—The only change made is the verbal addition already referred to.

Sub-clause (3)—An assessment under existing section 23 (3) is made after a consideration of the material which the Income-tax Officer has gathered. The draft sub-clause, therefore, makes it clear that in addition to the evidence produced in the case, the Income-tax Officer is also to take into account such materials. The definition, given as a separate clause, gives some indication of the material which the Income-tax Officer is competent to take into account.

¹ *Dhakeswari Cotton Mills Vs. C.I.T.* (1954) 26 I. T. R. 775 (S.C.).

Apart from this change of importance, the other changes are minor and are on the same lines as those made in sub-section (1)

Clause 148 Sub-clause (1)—It has been made clear that the 'best judgment assessment' is to be made after a consideration of the relevant material which the Income-tax Officer has gathered. The definition, given as a separate clause, will apply for this sub-clause also

The other verbal changes follow the lines on which verbal changes have been made in sub-section (1) of existing section 23

Sub-clause (2)—This is new, and is consequential on the addition of a reference in sub-sections (3) and (4) of existing section 23 to the relevant material gathered by the Income-tax Officer

Clause 149—See notes to the main clauses relating to assessment¹

Sub-section (5) of existing section 23 has been dealt with in the Chapter relating to firms, in view of its subject matter

Sub-section (6) of existing section 23 deals with a step consequential on assessment, and has been placed later in this Chapter

Notes to clause 150

Existing section 13 has been embodied here, with the changes explained below.—

Sub-clause (1)—Section 13, Proviso, provides for the power to compute the income upon such basis and in such manner as the Income-tax Officer may determine. In a case, however where the accounts are not correct and complete, the assessment is practically a best judgment assessment. The power to assess under the proviso to Section 13 can be exercised only where the accounts are correct and complete

This has been made clear in the draft, by dealing in separate sub-clauses with (i) the case where the accounts are correct and complete and (ii) the case where they are not correct or complete

Sub-clause (2)—See notes to sub-clause (1) above

Notes to clause 151

Existing section 27, which empowers the reopening of an assessment at the instance of the assessee, is confined to cases where the assessment was made under existing section 23(4). This limitation though not expressly contained in the section, follows obviously from the words 'he was prevented by sufficient cause from making the return'

¹ Clauses 147 and 148

The only kind of assessment in such cases would be one under section 23(4), which begins with the words "If any person fails to make the return.....". This has been made clear in the draft.

The existing words "within one month from the service of a notice.....satisfies the Income-tax Officer" are misleading; if construed literally, they would require that the satisfaction of the Income-tax Officer himself must be completed within one month. This is not, however, the intention. It should suffice if the assessee applies within one month for cancellation of the assessment. The section has been, therefore, slightly redrafted to make the intention clear.

It has been held by the Nagpur High Court in a recent case¹ that where an assessee is called upon by the Income-tax Officer to produce accounts and fails to do so because he does not in fact maintain any accounts, and the assessee is consequently assessed under section 23 (4), he is not bound to make an application under section 27 for reopening the assessment. He can raise the point again in an appeal before the Appellate Assistant Commissioner who is bound to entertain the point. No alteration in the law is required.

Notes to clauses 152—159.

General.—Existing section 34, relating to the power to assess an income which has escaped assessment, has been sought to be simplified in the draft clauses under discussion on the following lines:—

(1) The substantive provision dealing with the power itself, contained in section 34 (1) clauses (a) and (b), has been placed in the beginning; the requirement of notice is placed next; and the detailed provisions contained in the various provisos, dealing with the time-limit for the exercise of the power, have been put in separate clause.

(2) Section 34(3), relating to the period within which assessment should be completed, has been placed as a separate draft clause, since it is not confined in its application to an assessment under section 34 itself, but applies to all orders of assessment or reassessment under the Act.

(3) Provisions that have become obsolete, such as sub-sections (1A), (1B), (1C) and (1D), have been omitted. Since the new Act will apply only to assessments made for assessment years subsequent to the commencement of the Act, it is not necessary to repeat these sub-sections in

¹ *Sugarchand Kanhaiya Lal Rathil, Jabalpur V. C.I.T.* Judgment dated 20-9-1957 in *Mis. Civil case No. 115 of 1955* (not yet reported).

the new Act Any action that might have to be taken with reference to prior years can be taken even after the commencement of the new Act

Clause 152—It has been made clear that the power to make a reassessment is subject to the other provisions of the various clauses This has become necessary in view of the fact that the time-limit, at present dealt with in the provisos, has in the draft been dealt with in separate clauses

Clause 153—The short expression "income has escaped assessment" has been used in the preceding clause and defined here

Clause 154—This does not need any comments since the only change made is the addition of the words "before making the assessment" the Income-tax Officer shall serve a notice This is purely consequential on the scheme adopted in the draft to separate the various provisions at present contained in sub-section (1)

Clause 155

General—The time-limit for the issue of a notice under existing section 34 (1) is dealt with in this clause An attempt has been made to make the provision easier to understand, by stating the various time-limits applicable to the various situations separately. Thus, cases where no time-limit is prescribed, are dealt with first The case where the time-limit is eight years is dealt with next, and the residuary time limit of four years applicable when the case falls under existing section 34 (1) (b) is dealt with at the end

Sub clause (1) Para (a)—Existing section 34(1), 1st proviso, item (ii)—provides, in effect, that where the income that has escaped assessment exceeds the amount of one lakh of rupees or more, the assessment can be made under this section at any time For the purpose of computing this sum of one lakh of rupees, income that has escaped assessment either for the relevant assessment year for which the notice is to be issued, or for that year and any other years after which eight years have elapsed, can be taken into account The result is that the longer the period that is allowed to elapse, the more probable becomes the assessability of the assessee under this provision Thus, where an income of Rs 25 000 has escaped assessment for the year 1943-44, the income cannot be assessed under this section in, say, the year 1953 But if the income for the intermediate years, say 1944-45 is also allowed to escape assessment, the accumulated total of such escaped incomes would give a right to proceed under this section in, say, the year 1955 (if the accumulated total is one lakh of rupees or more) Since the main object of the provision for time-limit is to ensure that action is taken as early as possible, such a situation cannot be regarded as satisfactory In the draft

therefore, an attempt has been made to substitute a simple rule, under which, only the income for the 16 assessment years prior to the year in which the notice is issued, can be taken into account. The minimum amount of one lakh of rupees has been preserved in cases where an aggregation is to be made, but it has also been provided that where the income escaping assessment for the relevant assessment year itself is Rs. 50,000 or more, the power to proceed under this section should be available *at any time*.

The substitution of this rule has, incidentally, facilitated some simplification of the form of this section also.

The reference to the assessment year ending before the 31st day of March, 1941, has been omitted, since the 16 assessment years preceding the year in which notice may issue, which are referred to in the provision as drafted, will all be assessment years later than 1939-40, as the new Act will apply only for assessment years subsequent to its commencement.

It is, however, made clear, that for the purpose of computing the accumulated total that has escaped assessment, assessment years under the 1922 Act (i.e. the existing Act) can also be taken into account.

Sub-clause (2).—The restriction contained in existing section 34 (1), 2nd Proviso, regarding the issue of notice against the agent of a non-resident, would seem to apply to a notice under clause (a) as well as clause (b) of section 34 (1). For this reason, draft sub-clause (1) begins with the words “subject to the provisions of sub-section (2)” and draft sub-clause (2) is framed so as to make it clear that it applies to all notices under section 34 (1).

Clause 156.

Existing section 34 (3), 2nd Proviso, operates not only in relation to the period of completion of assessment, but also in relation to a time-limit for an issue of notice under section 34 (1). This is clear from the words “nothing contained in *this section* limiting the time within which *any action* may be taken.....” appearing in the beginning of the Proviso. The Proviso thus acts as an Exception not only to section 34 (3), main para, but also to the time-limit under section 34 (1). The latter aspect has been dealt with here.

Clause 157.

General.—The verbal changes are consequential on the breaking up of the section into various sub-clauses.

Sub-clause (2).—Existing section 34(1), 1st Proviso, clause (iii), says that a notice under clause (a) shall not be issued for any year.....unless.....the Commissioner is satisfied that it is a fit case for the issue of such a notice. Apparently, this would apply even where the notice is issued within four years. But, since a notice under clause

(b) can be issued within four years, without any such sanction, no harm would be caused if, in cases under clause (a) also, this restriction is made to operate only where the notice is issued after four years. The provision in question has been altered accordingly.

Other changes are verbal and consequential as above
 Clause 158.

Sub-clause (1)—Does not need any comments. The verbal changes are consequential as above.

Sub-clause (2)—No change has been made in existing section 34 (2).

As to the omission of sub-sections (1A), (1B), (1C) and (1D) of existing section 34, see notes above under this group of clauses under the head "General".

Clause 159. This is new. The time-limit for completion of assessment is at present contained in section 34 itself. Since it is being transferred in the draft to a separate section, it seems desirable to have such a clause to draw attention to the provision relating to time-limit.

Notes to clause 160

General.—Existing section 34 (3) has, in the draft, been split up into three sub-clauses. The main provision, imposing the time-limit, has been dealt with in sub-clauses (1) and (2), while the various exceptions have been dealt with separately in sub-clause (3), for the sake of clarity.

Sub-clause (1)—Paragraph (a) does not need any comments. The substitution of the words "assessment year" for 'year' is meant to secure precision.

Paragraph (b) is new, and is intended to provide that the time-limit in the case of a notice under existing section 28 (3) read with section 28 (1) (c) is four years counted from the issue of the notice. It seems desirable that there should be some time-limit in such cases.

Paragraph (c) is new. As already explained in the notes to the draft clause¹ corresponding to existing section 22 (3), some difficulty has been felt in cases where the assessee files a return under section 22 (3) towards the end of the period within which the assessment should be completed. The Department has to complete the assessment without any further investigation, lest the period shall be exceeded. To meet such cases, this paragraph has been added so that the Department may get at least one year for completing the assessment.

Sub-clause (2)—Deals with the limitation in case of assessment and reassessments under section 34.

Sub-clause (3)—The various exceptions contained in existing section 34 (3) have been embodied in this sub-clause, and each exception has, for the sake of clarity,

been dealt with in a separate item. The various items themselves do not need any detailed comments, since the verbal changes are purely consequential on the breaking up of the exceptions, into different items, as already explained.

One change of substance, however, has to be pointed out. Existing section 34 (3) allows the completion of an assessment under section 34 (1) (a) at any time. It is desirable that some time-limit should be imposed. The draft proposes a time-limit of 4 years from the end of the assessment year in which the notice is served.

The existing exception for assessments under section 34 (1A) has been omitted in the draft, since no such case can arise under the new Act, whose operation will be confined to assessment years subsequent to its commencement.

Explanation 1.—The second proviso to existing section 5, sub-section (7C) has been embodied here.

Very often, assessment proceedings are stayed by an order of a court, and in such cases it becomes difficult to complete the assessment within the period limited by section 34(3). A provision has, therefore, been added in the draft to exclude the period during which the proceedings were so stayed, while computing the period of limitation under section 34(3).

Explanations 2 and 3.—Proceedings by way of appeal, revision etc. sometimes result in an order under which the inclusion of a particular item of income in the total income of a particular previous year is disallowed. As a result, it becomes necessary to count that income as a part of the total income of *another previous year*. Such recomputation should be regarded as consequential on the proceedings by way of appeal etc., and the time-limit under section 34(3) should not be regarded as applicable in such cases.

Similarly, proceedings by way of appeal etc. sometimes result in an order disallowing a particular item of income as forming part of total income of A, and it may become necessary to include that item in the total income of B. This process also should not be regarded as subject to the period of limitation prescribed by section 34(3), since it is consequential on the order passed in the appeal etc. All that is necessary is a safeguard to the effect that the other person (B) should have been heard before the order was passed¹.

The Explanations in question are intended to clarify the position for such cases.

Explanation 3.—This is new and is intended to enable the Income-tax Officer to make an assessment at any time in the income of *another person*, whereby an order passed

¹ *S. C. Parashar vs. Vasantasen Dwarkadas* (1956) 29 I. T. R. 857 (Bombay H. C.)

on appeal etc such income is held to belong to that person. A safeguard has been provided to the effect that the provision will be applicable only where the other person against whom the assessment is now proposed to be made was given an opportunity of being heard before the basic order (that is the order passed in appeal etc on the basis of which the assessment is now sought to be made) was passed.

Notes to clause 161

General—Existing sec 35(1) deals with three things —

- (i) the power to rectify mistakes
- (ii) the period within which such rectification can be made and
- (iii) the procedure (i.e. the issue of notice etc) to be followed

For the sake of clarity these three things have in the draft been split up into separate sub-clauses

The second Proviso which bars action in respect of orders passed more than one year before the commencement of the Indian Income-tax (Amendment) Act, 1939 has been omitted as obsolete

Sub-clause (1)—The various authorities that can amend their orders have been dealt with separately in paragraphs (a) (b) and (c) along with the nature of the orders that can be amended by each authority

Since the order under this section is essentially in the nature of an amendment the phrase with a view to rectifying any mistake the may amend has been used. Incidentally this has enabled the use of the short expression amendment in subsequent sub-clauses thus avoiding the lengthy expression rectification of mistakes

Sub-section (2) of section 35 relating to the rectification of mistakes by the Appellate Tribunal has been omitted since the Tribunal is proposed to be abolished

Sub-clause (2)—The verbal changes are consequential on the scheme adopted in the draft to break up section 35(1) into various sub-clauses (See notes above under the head General)

Sub-clause (3)—Apart from verbal changes which are consequential the words or otherwise increasing the liability of the assessee have been added to make the provision comprehensive

Sub-clause (4)—This is new and embodies a practice followed even now and is also necessary as an appeal is now provided

Sub-clause (5).—does not need any comments.

Sub-clause (6).—does not need any comments.

Sub-clause (7).—The verbal changes that have been made are consequential.

Notes to clause 162.

General.—For the sake of clarity, the various special cases of rectification, dealt with in existing section 35(5) and subsequent sub-sections, have been embodied separately in this draft clause.

The wording of existing section 35(5) etc. is not happy. The words “shall be deemed to be a rectification,” creating an artificial fiction, have been replaced in the draft by words conveying the substance—that the Income-Tax Officer has power to amend.

The provisions contained in existing sub-sections (6), (7) and (10) of section 35 have been omitted, for the reason that no scope for the application of any of these provisions would remain in respect of assessments made under the new Act. The new Act will apply only to assessment years subsequent to its enforcement. Thus, any recomputation of total income consequential on assessment or modified assessment of excess profits tax or business profits tax under section 35(6) will be confined to cases arising under the old Act, that is to say, for assessment years prior to the enforcement of the new Act. The reason is, that neither excess profits tax nor business profits tax is in force now, and it is only for past assessment years that these taxes have any relevancy. Similarly, the recomputation of the total income of the share-holders consequential on the modification of the assessment of the company under section 23A, will necessarily be in respect of assessment years prior to the new Act. The reason is, that section 23A (as it stands in the present Act as amended up-to-date and as embodied in the draft) does not have any relevancy on the assessment of the total income of the share-holders. Any action under section 35(7) will be confined to past assessment years. On the same reasoning, any action under section 35(10) will necessarily be related to the assessment years prior to the new Act, since the recomputation of tax (by reduction of the rebate) under that sub-section is applicable only in respect of the assessment years 1948-49 to 1954-55. These sub-sections have, therefore, been omitted.

Sub-clause (1).—The following drafting changes may be noticed :—

(1) Section 35(5), as it stands at present, creates an ambiguity, namely, whether the words “where.....it is found on the assessment or re-assessment of the firm” are to be linked up with the words “under section 31, section 33” etc. The intention, obviously, is that the assessment or re-assessment need not have been made under the specific

sections referred to in the sub section This has been made clear in the draft, by separating the situations into paragraphs (a) and (b) in this sub-clause,

(ii) reduction or enhancement of income resulting from an amendment under section 35 itself is not at present covered by section 35(5) This has now been added in the draft,

(iii) as already explained in the notes under the clause¹ corresponding to existing section 35(1), action under section 35 is essentially in the nature of an amendment Further, the extension of the provisions of section 35(1) to the special cases dealt with in section 35(5) and subsequent sub-sections is purely artificial, and it would be better if the word 'rectification' is not used in respect of these special cases Hence the word "amendment" has been used in this and the subsequent sub-sections,

(iv) the existing sub-section speaks of the period 'referred to' being 'computed' in a certain manner Sections 35(8), 35(9) etc however, speak of the period 'specified being 'reckoned' from a certain date For the sake of uniformity, the expressions used in section 35(8) have, in the draft, been used in all the sub-clauses

Sub-clause (2)—This is new The existing section is silent on the question whether an order similar to that under section 35(5) can be passed in the case of a member of an association where the assessment of the association itself is revised It seems desirable to add such a provision, and this sub-clause is intended to achieve that object Since the provision is new, a proviso has been added to save the rule contained in existing section 14(2)(b) which enacts that tax is not payable by an assessee on any amount on which the tax has already been paid by the association

Sub-clause (3)—The only change that requires explanation is the omission of clause (b) of existing section 35(8) This clause is meant for a case where a company is assessed under section 23A and in consequence it becomes necessary to compute or recompute the total income of the shareholder As already explained above, section 23A (as it stands in the present Act as amended up-to-date and as embodied in the draft) has no relevancy now on the income of the shareholders Clause (b) of section 35(8) has, therefore been omitted. Other changes are consequential

Sub clause (4)—Existing section 35(9) provides that where a company does not pay the tax on its profits "within three years after the financial year in which the dividend was declared" the Income-tax Officer may proceed to recompute the amount of tax deemed to have been paid by the shareholders This presupposes that the assessment of the company has taken place and the company has failed to pay the tax There may, however, be cases where the

the assessment of the company itself is delayed. In such cases, it would not be proper to insist that the company should pay the tax within three years from the year in which "the dividend was declared". It would seem desirable to allow, in such cases, a period of at least one year from the end of the financial year in which the assessment of the company is made. Necessary alteration has been made in the draft sub-clause on this point. Other changes are verbal and consequential.

Sub-clause (5).—This embodies existing section 35(11) introduced by the Finance Act, 1958.

Sub-clause (6).—This is new. Cases sometimes arise when an assessee claims deduction for a bad debt in respect of a particular previous year, and the Income-tax Officer is of opinion that the deduction should have been claimed for an earlier previous year. Under the existing law, the assessee cannot obtain any deduction for such earlier years. The draft sub-clause is intended to remove this hardship by conferring the necessary power on the Income-tax Officer.

Notes to clause 163.

This reproduces existing section 29. The words "or other person" have been omitted, since the definition of "assessee", even in the existing Act, covers all persons by whom any tax etc., is payable. Moreover, in cases where A is liable to pay tax on the income of B, A will either be a "representative assessee",¹ or other person who would fall under the definition of assessee.

Notes to clause 164.

Existing section 24 (3) has been embodied here, since it deals with the steps consequential on the assessment of the income of assessee. Instead of the words "to have set off" the words "to have carried forward and set off", have been substituted, for the sake of precision.

Notes to clause 165.

Existing section 23 (6) has been placed here, since that again deals with a step consequential on assessment.

The existing words "whenever the Income-tax Officer makes a determination in accordance with the provisions of sub-section (5)" have been replaced by the words "whenever a registered firm is assessed or an unregistered firm is assessed under section.....", since the existing words do not correctly describe the nature of the action taken by the Income-tax Officer. In essence, the Income-tax Officer makes an "assessment", as is clear by the words "the total income.....shall be assessed" in section 23

¹ *Vide* Chapter on Liability in special cases.

(5) (a) (ii) and by the words "in the case of an unregistered firm, the Income-tax Officer may proceed to assess the total income" in section 23 (5) (b)

Notes to clause 166

The various kinds of returns submitted in respect of salary, dividend etc, have been dealt with here in one clause

Sub-clause (1)—Existing section 20A, dealing with the return to be submitted by a person paying any interest, says that the return is to be furnished to "prescribed officer" Rule 43A of the rules made under the Act provides that the return should be made to the Income-tax Officer in whose jurisdiction a person responsible for paying interest resides. It would be convenient if this rule is embodied in the section itself. One modification, however, seems desirable to be made in the rule while embodying it in this section. The return should be furnished to the Income-tax Officer having jurisdiction to assess the person submitting the return, (that is irrespective of the residence of such person) so that the Income-tax Officer can verify the items during the course of his examination of accounts without any additional labour. The necessary addition has, therefore, been made in the draft sub-clause

Sub-clause (2)—Clause (a) of existing section 21 provides that the return to be furnished in respect of salaries should contain the name etc., of the person who receives the salary from the "authority, company" etc. It is silent about a person receiving salary from the Government, even though the opening line of the section says that the prescribed person in the case of "every Government office" has to submit the return under this section. This lacuna has been supplied in the draft

No addition is proposed in respect of foreign Governments as it may be difficult to enforce the requirement of return from such Governments

Clause (b) of section 21 speaks of the amount of the income "so received or so due" "by" each such person (that is the person receiving salary). The clause, as it stood before its amendment in 1939 spoke only of income received "by" such person. The words "or so due" were added in 1939 to cover the case where salary has become due. At the time of the amendment however a small grammatical inaccuracy seems to have crept in. The income was described as income "due by" such person while what was intended obviously was income due "to" such person. Necessary verbal changes have therefore, been made in the draft to remove this inaccuracy

Sub-clause (3)—This does not require any comments. The provision contained in existing section 58T has been referred to here in view of its subject matter¹

¹ Cf draft clause 314 also

Notes to clause 167.

This embodies existing section 20. The words "or that no tax is payable" have been added to deal with a situation not covered by the Act—namely, where the company is not taxable for the year concerned.

CHAPTER XV

LIABILITY IN SPECIAL CASES

*Notes to clause 168.**General*

Existing section 24B is meant to deal with the case of death of the assessee and the proceedings to be taken against the legal representative. The language of subsection (1), however, is not direct enough to bring out in proper perspective the main idea behind this section. Further, it does not deal step by step with the various stages at which the proceedings might stand at the time of death. In the draft, therefore, verbal alterations have been made in order to make it clear that the following possible situations are to be covered by this section :—

- (1) where a person dies before any proceedings for assessment of his income have been commenced ;
- (2) where proceedings for assessment have been commenced by the issue of notice, but the assessment has not been completed ;
- (3) where proceedings for assessment have been completed, but the notice of demand has not been served, so that no "arrears" have come into being; and
- (4) where assessment has already been made and the notice of demand also served, but the actual realisation of the tax has not been completed, so that the amount of the tax is in "arrears".

Sub-clause (1).—It has been made clear that the liability of the legal representative is to be arrived at "in the like manner and to the same extent" as the deceased. Compare existing sections 40 (1) and 41 (1).

Sub-clause (2).—This is mainly intended to preserve the continuity of the proceedings and to ensure that all the possible situations referred to in the beginning of the notes to this clause under the head "General" are covered by the combined operation of sub-clauses (1) and (2).

Sub-clause (3).—This is intended to remove any doubts as to whether a legal representative is or is not an assessee. It has to be read with the draft definition of assessee and the notes thereto. Compare also the last words of existing section 24B (2), "as if such executor.....were the assessee".

Sub-clause (4)—is intended to apply, to legal representatives, certain useful provisions which have been incorporated in the group of sections dealing with "representative assessee".

Sub-clause (5)—does not need any comments

Sub-clause (6)—does not need any comments.

Notes to clause 169

General.—The assessments under existing sections 40, 41 and 42 (1) are really "representative assessments" as they are styled under the South African Income-tax Act. This will be clear from the following analysis —

(i) Section 40 (1) relates to persons under disability. The persons under disability enumerated in the section are, "minors, lunatics and idiots". In these cases, the guardian etc., of the minor, or the manager or committee of the lunatic or the idiot would have no ownership in the property or income. The income really belongs to the persons under disability, and all that the sections provides is a machinery for enforcing the liability of the incapacitated person. The tax is recoverable from the guardian etc. in the like manner and to the like amount as it would be leviable upon the person under disability if of full age and in direct receipt of the income. This is a case where income received by the guardian etc., on behalf of the incapacitated person is taxed in the hands of guardian etc., and can therefore be treated as a representative assessment.

(ii) Section 41 relates to income received on behalf of non residents, also limits the liability of the trustee or agent by the words "in the like manner and to the same amount" as the liability of the beneficiary if in direct receipt of the income. Here again, the income which a trustee etc received on behalf of the beneficiary is taxed in the hands of a trustee etc. It is therefore a representative assessment.

(iii) Section 41 relates to income received on behalf of a beneficiary by the Court of wards, Administrator-General, the Official Trustee, trustee appointed under a deed of trust etc. The section makes these persons liable to be assessed in respect of income received by them "on behalf of" the beneficiary and "in the like manner and to the same amount" as the beneficiary (There are two provisos which are not relevant for the purposes of the present discussion). The assessment is thus a representative one.

(iv) Section 42 relates to the agent of a non-resident and empowers the department to treat the agent as the assessee in respect of tax leviable on certain income of the non-resident deemed to arise in India. The income does not belong to the agent, but, for facilitating the collection of tax he is made liable and "is deemed to be the assessee for all the purposes" of the Act. He is thus a representative assessee.

It would, therefore, contribute to clarity if all these provisions are simplified and treated in a uniform manner. The substance of these provisions is the same, namely, that the tax is leviable and recoverable from A even though normally it would be recoverable and leviable from B. The treatment of all these provisions in one section will also avoid the unnecessary repetition of the words "the tax shall be leviable and recoverable" or words like "..... shall be deemed to be the assessee" etc.

The scheme adopted, therefore, is to collect these provisions at one place (in so far as the rules applicable are common to all the cases), under the head "Representative assesseees".

General Scheme of sections relating to representative assesseees.

The group of sections begins with definitions, followed by the substantive provisions defining the liability of the representative. Special provisions applicable only to special classes of representative assesseees are placed at the end.

Assistant has been taken from the South African Income-tax Act in framing these provisions. The following sections of that Act have been drawn upon :—

Section 69.—Definitions.

Section 70.—Liability of representative assessee.

Section 71.—Right of representative assessee to recover the tax from the beneficiary.

Section 72.—Personal liability of representative assessee in cases where he parts with the estate without making provision for tax.

Section 75.—Remedies of the department against property with agent or trustee to be the same as the remedies against the property of the principal or the beneficiary.

Sub-clause (1)

Item (i).—Existing section 42(1), main para, latter part, making the agent liable for the tax on certain income of non-resident, has been incorporated here. (The earlier part of the main para of the section has already been incorporated in the group of sections relating to deemed income). The first proviso to section 42(1) has been dealt with in a separate clause in this Chapter, while the second and third provisos have been embodied in another separate clause in this Chapter.

Existing section 42(2) has already been incorporated in the Chapter relating to provisions against avoidance of liability to income-tax, while section 42(3) has been incorporated in the group of sections relating to deemed incomes.

Item (ii)—This represents a part of existing section 40(1). There seems, however, to be no reason why there should be two provisions, one in section 40(1) and the other in section 41(1), for trustees. Convenience requires that all trusts should be dealt with in one section. Accordingly, the reference to trustees in existing section 40(1) should be omitted. This will, of course, lead to the result that oral trusts not covered by section 41 will not be covered by the new provision. However, this would not create any practical difficulties, as the trustee will be still chargeable under the main charging section, namely, section 3; moreover such instances will be very few. As a matter of fact, it becomes difficult to administer existing section 40(1) in the case of oral trusts, in the first place, it is not easy to verify the existence of a trust, and in the second place, even if the trust is ascertained, it is not easy to find out with certainty the shares of the beneficiaries. Oral trusts should not, it is suggested, be included in the ambit of the provisions relating to representative assessments. Existing section 40(2) will be covered by another clause that follows in this chapter, defining "agent" in relation to non residents.

Items (iii) & (iv)—Existing section 41(1) has been broken into these two items, for the sake of clarity. Trustees or authorities appointed under law like the Official trustee, the Administrator General, the Court of wards, or receivers or managers appointed by the court have been dealt with in item (iii) while trustees appointed under a trust deed have been dealt with in item (iv). In both the items, it has been made clear that income which the trustee, the court of wards etc receives in fact would be also governed by the item, *vide* the words "receives or" added before the words "entitled to receive". This change has been made on the lines of existing section 40(1).

Sub clause (2)—This sub-clause is intended to make it clear that the persons liable as representative assessee are to be deemed to be assessee. This will place them within the scope of "assessee" as proposed to be defined in the draft (*vide* also notes to clause 2, definition of "assessee"). Existing sections 40(1) and 41(1) achieve this result by providing that the tax shall be leviable from the guardian etc., while existing section 42(1) main para last words, straight-away provides that the agent shall be deemed to be an assessee.

The sub-clause adopts the method used in section 42(1).
Notes to clause 170

General—The liability of the representative assessee is dealt with in this section. The notes to the clause defining 'Representative assessee' may also be perused as to the general scheme of these sections.

Sub-clause (1)—A uniform provision has been made as to the nature and extent of the liability of the representa-

tive assessee. The existing sections on the subject, i.e. sections 40(1), 41(1) and 42(1), express themselves in different ways; for example, section 40(1), after providing that the guardian etc. is to pay the tax (*vide* the words "the tax shall be levied.....") goes on to say that "all the provisions of this Act shall apply accordingly". Section 40(2) also employs the same language. Section 41(1) is also on the same lines. Section 42(1), main para, last line, provides that the agent "shall be deemed to be for all the purposes of this Act, the assessee" in respect of the tax payable by the non-resident.

It is desirable that this diversity of language be replaced by the same formula for all these cases, since such diversity unnecessarily causes confusion and gives rise to doubts as to whether any difference in substance is intended or not. Draft sub-clauses (1) and (2), therefore, make it clear that the representative assessee is subject to the same duties, liabilities etc. as if the income were his own income. It further provides that he is liable to assessment in his own name. The *category* under which he is to be assessed and the *computation* of tax, however, are to be governed by the principles that would have been applicable to the beneficiary himself, and this has been made clear in the draft.

The words "representative capacity" will, incidentally, remove one lacuna existing in the present Act. When a trustee is charged in respect of income of the trust in his hand, the question might arise whether his individual income derived from his personal properties can be included in the same assessment. In other words, the question is, whether the assessment of a trustee *qua*-trustee is to be kept completely separate from his assessment in his private capacity. On principle the two should be kept separate as the capacities are different, but there is no provision in the present Act giving clear guidance on this point. The words "representative capacity only", as used in the draft sub-clause under discussion, will make the position clear.

Existing section 41(1) etc. are limited to "tax". The position regarding penalty or any other sum due under the Act should not, however be different, and the provision as drafted will cover penalties and other sums also.

Sub-clause (2).—The provision that a representative is liable only to the extent of the assets with him at present appears only in the case of a legal representative liable under section 24B(1). There is however no reason why this protection should not extend to representative assessee, such as guardians, trustees, agents, etc. It is therefore put in a general form in this sub-clause. (There are, of course, special remedies available against certain representative assessee, which have been saved in the draft clauses on the subject that follow in this Chapter.)

Sub-clause (3).—Persons liable as representative assessee, especially as trustee, guardian or manager etc. (i.e. the assessee governed by existing sections 40 and 41) are, at

present, liable to be charged directly under section 3 also. In any case, the absence of a specific provision lends support to the opinion expressed by some commentators that the Act leaves an option with the Department to assess the trustee etc either under section 3 or under section 40 or 41. Since assessment under section 3 might be more onerous than under section 40 or 41, it seems desirable to make it clear that it is obligatory on the Department to apply the provisions of sections 40 and 41 in cases where they are applicable, leaving the general liability under section 3 to be applied only in cases which are outside sections 40 and 41. The draft sub-clause under discussion is intended to achieve this object.

Notes to clause 171

Sub-clause (1)—This is new. The principle of the sub-clause however is not controversial and is therefore embodied in the draft on the lines of section 71(1) of the South African Income-tax Act.

Sub-clause (2) and (3)—Existing section 42, second and third provisos, lay down a procedure whereunder the agent of a non-resident can approach the Income-tax Officer for the issue of a certificate stating the amount to be retained by the agent for discharging his estimated liability in respect of tax on the income of the non-resident. This provision can be usefully extended to all cases of representative assessment, and has therefore been embodied in the draft sub-clause under discussion.

Notes to clause 172

This is new and is based on section 72 of the South African Income-tax Act. In a sense, it is a corollary of the provision in the main clause¹ relating to the liability of a representative assessee, to the effect that he is liable only to the extent of the estate and in a representative capacity only. If the representative assessee parts with the assets without making proper payment of tax, it is but fair that he should personally become liable.

(The South African Act, of course, includes even a case where the representative assessee alienates, charges or disposes of the income in respect of which the tax is chargeable, in South Africa the tax is payable on the income of the current year itself. Since, however, the scheme of the Indian Act is different, this part of the South African section has not been incorporated in the draft clause under discussion.)

Notes to clause 173

Sub-clause (1)—The definition of "agent", given in this sub-clause, is based in substance on existing section 43, main para, but assistance has been taken in drafting it from the language of the Ceylon Income-tax Ordinance².

¹ Draft clause 170.

² Section 35, Ceylon Income-tax Ordinance.

Paragraph (d) embodies section 40(2) in a brief form. It seems unnecessary to treat the case of a trustee of a non-resident separately from the agent of a non-resident or to devote a separate section to it. In substance, the liability of the trustee (when the beneficiary is a non-resident) should be the same as that of the agent.

Existing section 43, main para, contains the words "upon whom the Income-tax Officer has caused notice of his intention to treat him as agent" to be served. Since a provision for giving opportunity to the agent is already contained in section 43, second proviso, (*vide* draft sub-clause (2)), these words are unnecessary and have, therefore, been omitted in the draft.

The words ".....shall.....be deemed to be such agent" have been replaced in the draft by the words "agent.....includes.....". A definition in the form of enumeration having been adopted in the draft, the form had to be changed.

Existing section 43, Explanation, has been embodied in the Explanation to draft sub-clause, with the addition of the words "or relinquishment" on the lines of existing section 12B. The reference to the date 28th day of February, 1947, has been omitted as unnecessary, since the new Act will apply only prospectively, that is, for assessment years subsequent to the commencement of the new Act.

Section 43, 1st proviso, has been embodied in the proviso to the draft sub-clause. An attempt has been made to make the language less involved, by opening the proviso with a reference to the "broker", instead of beginning with the word "transactions" as the existing proviso does.

Sub-clause (2).—Existing section 43, 2nd Proviso, has been embodied here, with the addition of the words "to be treated as such" at the end in order to make the provision more precise.

Notes to clause 174

The first proviso to section 41(1) has been split up into paragraphs, for the sake of clarity. The position in respect of income-tax has been stated separately from the position regarding super-tax, since the provision that the tax shall be levied at the maximum rate does not apply to super-tax, see existing section 58(1).

[The latter part of the Proviso, of course, must be taken as applying to super-tax also, and this has been made clear in the draft, *vide* sub-clause (b).]

The latter part of the Proviso is, obviously, an exception to the earlier part of the Proviso, and not to the main para (part) of the sub-section. In other words, where the earlier part of the proviso does not apply, the latter part

also does not apply. The draft makes this clear by treating the latter part as an item—item (i) in the draft—falling under the earlier part, i.e. under sub-clause (a) of the draft.

One important change has been made in the substance of the existing provision Section 41(1), 1st Proviso, (dealing with the case where the income is not specifically receivable for one person or where the shares are unknown) provides that income-tax shall be chargeable—

(i) where the beneficiaries have no other personal income, and none of them is an artificial judicial person, then at the rate applicable to an association,

(ii) in other cases, at the maximum rate. This provision leads to an anomaly. Where a beneficiary has even 1 Rupee of other income, the income becomes chargeable at the maximum rate. Moreover, the provision is not simple in its working. The draft, therefore, proposes a provision where under the tax will always be at the rate applicable to an association, except in cases where the income is received by a beneficiary and the Income-tax Officer desires to charge income-tax at the rate individually applicable to him¹.

Notes to clause 175

Existing section 41(1), 2nd proviso, has been embodied in this clause, which does not need, any comments

Notes to clause 176

This is new and has been introduced on the lines of section 75 of the South African Income-tax Act, in order to make it clear that the fact that a person is holding certain property as a representative assessee (and not as the beneficial owner) does not affect the remedies available to the department against the property

Notes to clause 177

Existing section 41(2) provides, in effect, that though a Court of Wards, Official trustee, trustee appointed under a deed etc. is assessable as representing the beneficiary, the direct assessment of the beneficiary is not barred. There is no reason why this principle should not be applied to all representative assessee, and the rule has, therefore, been embodied in this clause, which will be applicable to all cases of representative assessment

¹ The Subject has been discussed by the Taxation Enquiry Commission which however did not favour any change. See T. E. C. Report (1953-54) pt II Ch VIII para 9 to 11, page 107

Notes to clause 178

This is new and is intended to state the position regarding tax in respect of the estate of a deceased person in the hands of the executor. The clause, of course will be confined in its application to income derived after death. Income in respect of the period up to death will be governed by existing section 24B, which has already been incorporated in the draft clause in this Chapter relating to legal representatives.

The clause has been drafted on the lines of the relevant provision of the Ceylon Income-tax Ordinance.¹

Notes to clause 179

This is consequential on the new clause introduced in the draft laying down the liability of the executor, and will authorise the executor to recover the tax from the persons to whom the estate is to be distributed.

Notes to clause 180

General.—Existing section 26(2), which deals with the case of succession to business, profession or vocation, raises a number of difficulties, and the language of the section has not escaped criticism². Some difficulty is created by the words “where a person carrying on a businesshas been succeeded in such capacity”. The exact significance of the words “in such capacity” is not clear. The observations of the Privy Council³ indicate that what is intended is, that the business etc. should continue to be carried on by the successor. A person who becomes merely a successor (in the sense that he gets the legal ownership of the business etc. but does not actively continue the business etc.) would not be governed by this section, since in this case there would not be any income after the date of succession. The wording of the section, therefore requires some change to make this intention clear.

For the sake of simplicity, section 26(2) has been split up in three sub-sections in the draft.

Sub-clause (1).—Apart from the changes explained above, the following drafting changes have been made :—

(1) The existing words “person succeeded” and “person succeeding” cause a slight confusion, since it is not clear whether the predecessor is intended or the successor is intended, and some effort has to be made to remember the person intended to be covered. The expressions “predecessor” and “successor” have, therefore, been used in the draft in place of these words.

¹ See Sections 11 (10) and 11 (11) of the Ceylon Income tax Ordinance.

² See observations of Madhavan Nair J. in *Jupudi Kesava Rao vs. C.I.T.* (1935) 3 I.T.R. 339, 343 (Mad.).

³ *Maharajadhiraj of Darbhanga vs. C.I.T. Bihar and Orissa* (1934) 2 I.T.R. 345, 347, 348 (P.C.)-61 I.A. 312-I.L. R. 13 Pat. 607.

(2) In order to explain the effect of this section more clearly, clauses (a) and (b) have been added in the draft to provide that the income upto succession is assessable on the predecessor and the income after succession is assessable on the successor. Incidentally, the use of the words "income of the previous year up to succession" will also make it clear that the previous year talked of is the previous year in which the succession took place.

Sub-clause (2)—The words "year in which succession took place" have in the draft, been prefaced by the word "previous". For the sake of clarity, the latter half of section 26(2), Proviso, has been dealt with in a separate sub-clause, see draft sub-clause (3).

Sub clause (3)—In existing section 26(2), Proviso, latter half which provides that the tax in respect of the "assessment assessed on the person succeeded", shall be payable by the successor, the wording does not sound well, the recurrence of "assessment" and "assess" can be avoided. The language has, therefore, been altered in order to make the intention clear, though this has resulted in a slight elaboration.

Sub-clause (4)—Existing section 25A sub-section (2), deals in part with the case of succession, though that section mainly deals with the partition of a Hindu family. The portion dealing with succession has been incorporated in this sub-clause, for reasons already explained in the notes to the draft clause dealing with partition of Hindu families.

The words "where any person has succeeded to a business formerly carried on by a Hindu undivided family whose joint family property has been partitioned on or after the last date on which it carries on such business" in existing section 25A(2), do not give out the intended meaning easily. What is intended is, that there is first a succession to the business of a family, and simultaneously with the succession or subsequent thereto there is partition of the family property. This has been stated in more direct language in the draft sub-clause under discussion. It has also been made clear that it is the income upto the date of succession which is to be assessed in the manner provided in the section relating to partition. Income subsequent to succession will be taken care of by existing section 26(2), and this has also been made clear by the words "but without prejudice to the provisions of this section" at the end of the draft sub-clause.

Notes to Clause 181

General—Existing section 25A is really intended to lay down the proposition that until there has been a complete partition of the joint family property and the Income-tax Officer records a finding to that effect, the family should

¹ See notes to draft Clause 181, (4)

be treated as joint and assessed as a Hindu undivided family. The way in which the section begins, however, clouds the main proposition, because the section begins with procedural matters and relegates the main proposition to the last sub-section. The various sub-sections have, therefore, been re-arranged in order to emphasise the main proposition contained in the section.

Sub-clause (1).—It has been held by the Privy Council¹ that section 25A applies only where there is a total partition. This is certainly the position under the existing section. But it would be desirable to apply the procedure contained in the section to partial partition also. The draft, therefore, makes this alteration in the section, with consequential changes.

Sub-clause (2).—The proviso to section 25A(1) has been combined with the main para.

Sub-clause (3).—Provision has been made that the Income-tax Officer, while passing an order under this section, should record a finding as to the *date* of the partition. This, besides avoiding many complications, will facilitate the assessment for the periods before and after partition.

Sub-clause (4).—Some confusion is caused by the language of existing section 25A(2), which, while opening with a reference to a case of partition, goes off at a tangent to deal with the case of succession. For the sake of clarity, these two cases should be dealt with separately, even though the substantive rule to be applied may be the same. Draft sub-clause (4) confines itself to partition. Succession is dealt with in the separate clause² corresponding to existing section 26(2).

The existing provision in section 25A(2), main para, to the effect that the Income-tax Officer shall make assessments on the members or group of members accordingly "in accordance with the provisions of section 23" creates an impression that a special assessment for the purposes of this section has to be made on the member etc. This is, however, not the intention. The section is merely intended to lay down the *liability* of the members for pre-partition income, and does not require that the *assessment* made in pursuance of his liability should be made separately from the individual assessment of each member. This part of the sub-section has, therefore, been omitted.

There is some amount of confusion, in existing section 25A(2), as to how far a member (or "group of members") is liable for pre-partition tax. While the main para. of that sub-section says that each member is liable for a "share of the tax on the income so assessed" according to the portion of the joint family property allotted to him, the proviso says that the liability shall be "joint and several". The

¹ *Sundar Singh Majethia's case* (1942) 10 I.T.R. 457 P. C.

² See draft clause 180(4).

position is not quite clear. The intention, however, seems to be this, that a member is jointly and severally liable, and that for the purpose of computing his several liability the property received by him is to be taken into account. To make this clear, the language of the proviso has been modified and the position has been stated in a different form in the draft. For clarity, cases of partition during previous year have been dealt with separately from the cases of subsequent partition.

In order to make the section comprehensive, partial partition has also been dealt with, as pointed out above in the notes under sub-clause (1). The words 'total income received by the family' shall be assessed, will, in relation to partial partition, have the effect of including the income received by the family in the assessment of the family even after the partial partition.

Sub-clauses (5) and (6)—See under sub-clause (4) above.

Sub-clause (7)—This is new. The rule embodied in the draft is that where a family was carrying on a business at the time of partition, the assessment may be made by the Income-tax Officer of the area in which the principal place of business was situated before the partition, in other cases the place of residence of the last manager will govern the decision of the question.

Sub-clause (8)—This is new. The existing section is silent as regards penalties and other sums. The sub-clause is intended to make the position clear.

Explanation—Clause (a) of the Explanation is intended to codify a rule already established. Section 25A applies only where there is such division of the property as its nature admits of, mere severance of status does not fall under this section. This is also clear from the words "allotted at the partition" in existing section 25A(2).

Clause (b), defining "partial partition", does not need any comments.

Notes to clause 182

General—All the provisions relating to shipping business as contained in sections 44A, 44B and 44C, have been placed in one clause.

The provisions have been re-arranged so as to state the liability first followed by the method of assessment, except tion and savings.

1. Cf *CIT vs Samchar Sah* (1955) 27 ITR 307 (Patna); *Raju Chettiar and others v Collector of Madras* (1956) 29 ITR 1 (Madras); *M. Subba Rao v CIT Hyderabad*, (1957) 31 ITR 867 (Andhra).
2. *Bansudhar Dhandhama and another v CIT* (1941) 12 ITR 126; *Gordhandas T. Mangaldas v CIT* (1943) 11 ITR 183; *Jagannath Ram v CIT* (1951) 19 ITR 353; *Bhim Raj Bansi Dhar v CIT* (1954) 26 ITR 185.

Sub-clause (1).—The expression “financial year” has been substituted for the expression “year”, for the sake of precision.

Sub-clause (2).—The existing section is silent about the carriage of mail by the ships covered by the section. It seems desirable to add a reference to mail¹.

Existing section 44B(2), latter part, provides that one-sixth of the amount assessed shall be deemed to be the amount of profits and gains accruing to the principal on account of carriage of passengers etc. But since it is only income which accrues in India that is taxable, this part of the section has been re-drafted. It has also been made clear that section 44B will apply whether the amount is payable in or outside India.

Sub-clause (3).—Does not need any comments.

Sub-clause (4).—Existing section 44B(3), earlier part, provides that the Income-tax Officer shall determine the sum payable as tax at the rate applicable to the total income of a company. Since, however, there are different rates applicable to different kinds of companies (by virtue of the annual Finance Act), it seems desirable to make the provision more precise, by indicating exactly the category under which such ship-owners are to be placed. The draft sub-section, therefore, makes it clear that the rate applicable to a company which has not made the prescribed arrangements for the deduction of super-tax on its dividends under existing section 18(3D), will be the rate to be applied under section 44B.

Sub-clause (5).—Does not need any comments.

Sub-clause (6).—Section 44B, latter part, provides that a port clearance will not be granted until the officer concerned is satisfied that the tax has been duly paid under this section. In the draft, the words “the tax assessable under this section” have been used to make it clear that this sub-section will apply whether the tax has been duly assessed and has, therefore, become payable, or whether the tax is “assessable”. In other words, this sub-section will apply even if the tax has not actually been assessed by reason of any default of the master of the ship etc.

Sub-clause (7).—The word “year” has been replaced by the words “financial year” in the draft, for precision. Further, it has been made clear that the payment of tax will be treated as advance payment of the tax “leviable in the relevant assessment year”, in order to make the provision more precise.

Sub-clause (8).—Does not need any comments.

As regards the words “relevant assessment year”, notes above under sub-clause (7) may be seen.

Notes to clause 183

Existing section 42(1), first proviso, lays down a rule which relates to the recovery of tax on a non-resident, not

¹ Cf. Section 15 Sub-section (1), South African Income-tax Act.

from his agent but from his assets in India. The emphasis here is on the assets, this provision has, therefore, been excluded from the draft clauses dealing with representative assessment, and has been placed here.

The words 'without prejudice to' have been added in order to make it clear that the remedies conferred by the other sections referred to are not affected by the special provisions of this section.

The words 'whether in his name' had to be added here, since section 42(1), 1st Proviso, in the scheme of the existing Act, is connected with section 42(1), main paragraph, and the main paragraph uses these words.

Notes to clause 184

Section 24A has been embodied in this clause. For the sake of simplicity, the provision has been split up into a number of sub-sections.

Sub-clause (1)—The provision for assessment in the current financial year, embodied in section 24A and other similar sections, really constitutes an exception to the general principle embodied in section 3 that it is the income of the previous year that is taxable.

The chargeability of the income in the current assessment year is made clear by specific words in this sub-clause and it is also made clear that to this extent the section overrides section 3. (As a matter of fact the draft clause for s. 3 is itself subject to the other provisions of the Act.) (See also notes to sub-clause (2) below.)

It may be added that the language of this section has also been criticised by the Income-tax Investigation Commission. The alterations made in the draft, though they do not follow the lines suggested by the Commission, remove the ambiguities and lacunae to which the attention of the Commission was directed.

Since the section will apply only to natural persons, the expression 'person' has been replaced by the expression 'individual'.

Sub-clause (2)—The period whose income is chargeable is mentioned separately in this sub-clause. The existing provision says that the total income to be assessed is 'of the period from the expiry of the last previous year of which the income has been assessed in his hands to the probable date of his departure from the taxable territories, or where he has not been previously assessed, on his total income of the period up to the probable date of his departure from the taxable territories'. Now in so far as this period covers a previous year which has been completed before the commencement of the financial year in which the Income-tax Officer takes action under this section the section has no importance because assessment for such earlier

¹ See I.T.C. Report (1948) page 25 para 98.

previous years can be made even under the normal provision in section 3. It is only in respect of a previous year which falls wholly or in part *within* the financial year that the section needs to be relied upon. In the draft, therefore, the words just now quoted have been omitted.

Of course, it is still necessary to cover cases where a completed year of income forms part of the period from the end of the last previous year to the date of departure. For example, a person whose previous year ends on the 31st December may leave India, say, in February, 1958. The year of income commencing on the 1st January, 1957 has to be covered, because the assessment year for that income will be 1958-59, which has not yet started. In such cases the complete year of income 1957 as well as the fraction from 1st January, 1958 to February, 1958 may be governed by this section. Hence, draft sub-clause (2) does not make any other modification as regards the taxable period.

Under the existing section, the position regarding rate of tax has been stated in a very elaborate manner. It says that the assessment shall be made "as regards each completed previous year" at the rate at which such income would have been charged had it been fully assessed. Now, as already explained, the incomes of years completed before the commencement of the assessment year in which the Income-tax Officer takes action are governed by the normal provision in section 3, and it does not make any difference whether they are dealt with under section 3 or under this section. Under section 3, the rate applicable is the rate for the relevant financial year; such cases should, therefore, be left to be governed by section 3, and hence the words just now quoted are unnecessary and have been omitted in the draft. The remaining "previous year", that is, the period from the end of the previous year for the assessment year to the date of the departure will continue to be governed by this section.

As a matter of fact, the words just now quoted are misleading from one point of view, because, if interpreted strictly, they would mean that a person leaving India in February, 1958 and having his previous year ending with the 31st day of December, 1957 would be chargeable at the rate applicable to the assessment year 1958-59. Obviously, this is not the intention, and the provision as embodied in the draft will obviate any possibility of any such wrong result being deduced from this section.

Sub-clause (3).—The criticism of the existing section, made above in the notes to sub-clause (2), applies in respect of the provisions for estimating the total income also. The power to estimate should not be confined, as in the existing section, to a fraction of a previous year; even a completed previous year might fall within the period for which the income has to be "estimated". The sub-clause has therefore been widened to give a wider power to the Income-tax Officer in this respect.

Sub-clause (4)—In view of the simplification made in sub-section (1), it has become possible to simplify this sub-section by removing the elaborate description of the period for which return is to be called

The words "(along with such other particulars as may be provided in the notice)" have been omitted in the draft, since the provision that it is a notice under section 22 (2) implies that other particulars are also to be furnished, where required. The words 'subject to the provisions of this section' have been added for precision, particularly in view of draft sub-clause (3)

Sub-clause (5)—It appears desirable to make it clear that the special assessment made under section 24A is in addition to any regular assessment which may happen to take place in the same assessment year. This has been made clear by this sub-clause. Existing section 25(1), latter portion, may be compared

Sub-clause (6)—This is new. The special provision limiting the period of notice to seven days, embodied in sub-clause (4) is applicable to the emergency assessment by virtue of the section itself. Where, however, the normal assessment for any past previous year has not, yet, been made on the assessee who leaves India it may sometimes be necessary to finish the assessment before the assessee leaves India. In such cases the normal period of 30 days provided for in section 22 may be difficult to be complied with. The draft sub-clause, therefore, allows the Income-tax Officer to reduce the period in such cases. This new provision will ultimately be for the benefit of the assessee, since he cannot obtain a clearance certificate under existing section 46A until his assessments have been finalised

Sub-clause (7)—A time limit of three months will be allowed to the Income-tax Officer except where the delay is occasioned by any conduct of the assessee

Notes to clause 185

This clause embodies a part of section 25 of the existing Act. The latter part of section 25 (2), imposing a penalty, is transferred to the Chapter on penalties

The section has been simplified without affecting the substance. Main drafting changes are —

- (i) The words "notwithstanding anything contained in section 3", have been added to make it clear that the ordinary rule requiring assessment of the previous year's income in the next assessment year is modified in this section,
- (ii) the words "discontinued in any year" have been replaced by 'discontinued in any assessment year', for the sake of precision,

- (iii) words excluding a business etc., charged under the 1918 Act have been added, since section 25 (1) does not apply to such business, *vide* the words "to which sub-section (3) is not applicable", in existing section 25 (1) ;
- (iv) it has been made clear that the power to charge tax in the current assessment year is to be exercised at the discretion of the Income-tax Officer ;
- (v) the existing words "assessment may be made in that year on the basis of the income.....in addition to the assessment, if any, made on the basis of the income.....of the previous year" give rise to a controversy, namely, whether the income of the normal previous year is to be combined with the income of the current assessment year, when making the assessment. It has been considered desirable to alter the wording on this point to make the intention clear. The draft, therefore, uses the words "the total income.....of the period from the expiry of the previous year to the date of discontinuance", and avoids any reference to the normal previous year in sub-clause (1). Draft sub-clause (4), however, makes it clear that any assessment made under the normal provision will not be affected by the special procedure given in this section.

Sub-clause (2).—Does not need any comments.

Sub-clause (3).—Does not need any comments.

Sub-clause (4).—See notes under sub-clause (1).

The remaining portion of section 25 has been embodied in the draft at the appropriate places.

Notes to clause 186

Sub-clause (1).—Section 44 of the existing Act deals the assessment in case of discontinuance of business by firms and dissolution of associations. The part dealing with firms is being incorporated in a separate clause (*vide* separate Chapter relating to firms). The part dealing with associations has been incorporated here.

A reference to the legal representative of a member who is deceased has been added to provide for cases where a member dies after dissolution and before assessment.

The changes made by the Finance Act, 1958 have been given effect to.

Sub-clause (2).—This is new. The object is to allow the Income-tax Officer to continue assessment proceedings already started before the dissolution etc. so that time may not be wasted in the re-issue of notices etc.

Sub-clause (3)—Section 44(3) as inserted by the Finance Act 1958 authorises the Income-tax Officer etc to impose a penalty under clause (a) or (b) or (c) of section 28 (1) in respect of a dissolved firm or association. Instead of making an elaborate provision on the lines of that sub-section it is considered sufficient to say that the provisions relating to tax will apply to penalties also. Sums other than penalties have also been covered in the draft. The provision as drafted will thus be more comprehensive though less elaborate in form.

Sub-clause (4)—This is new and is intended to make it clear that the limitation on the liability of the legal representative is not to be affected by the provisions of this section. This becomes necessary in view of the fact that in draft sub-clause (1) a reference to legal representative has been added.

Notes to clause 187

Existing section 12AA is applicable in all cases where the time taken by the author of a book is more than twelve months. Clauses (a) and (b) dealing separately with a case where the time taken is less than 24 months and a case where the time is more than 24 months are unnecessary in the opening portion since this distinction is relevant only in connection with the mode of separately allocating income. The distinction does not affect the applicability of the main principle of the section. A slight recasting of the language has therefore been attempted in the draft on this point.

Clause (a) of the existing section uses the words 'less than twenty four months' and clause (b) uses the words 'more than twenty four months'. For the sake of precision the former wording has been replaced by 'not more than twenty four months' so that clauses (a) and (b) can collectively exhaust all cases including a case where the time taken is exactly 24 months.

It may be observed here that existing section 12AA was inserted in 1953. The Taxation Enquiry Commission recommended the spread-over of income not only for copyright but also for patents. The Commission suggested that proceeds of sale of patent rights should be spread over a period of six years. Section 318 of the UK Income-tax Act 1952 also allows such spread-over in the case of patents. It is for consideration whether the section should not be extended to patents.

Notes to clause 188

Existing section 8 third proviso has been incorporated here with two changes —

- (i) The rate at which the State Government will pay tax should be laid down by the Finance Act specifically. This has been made clear in the draft.

- (ii) Since the word "receivable" in existing Section 8, main para, has in the draft been replaced by word "received", necessary drafting changes have been made here also.

CHAPTER XVI

SPECIAL PROVISIONS APPLICABLE TO FIRMS

Notes to clause 189

Provisions relating to firms have been brought together in this Chapter under the following groups :—

- (1) Assessment.
- (2) Registration.
- (3) Other provisions.

Sub-clause (1).—Existing section 23 (5) (a) provides that the total income of each partner, "including therein his share" etc., shall be assessed and the sum payable by him on the basis of such assessment determined. Since the scheme of assessment in the case of a registered firm is, that the partner is himself assessed on his share, these words have been replaced in the draft by the words "the share.....shall be included in his total income" etc., which seem to be more appropriate.

Sub-clause (2).—Does not need any comments. Though this provision is in a sense repetition of existing section 16(1) (b) Proviso, it has been allowed to stay for the sake of convenience of reference.

Sub-clause (3).—The existing words "his share..... shall be assessed on the firm" have been replaced in the draft by the words "tax on his share.....shall be assessed on the firm", which are more appropriate.

Section 23 (5) (a) (i) has been retained in the draft in the existing form ; but it is recommended that it may be deleted.

The Finance Act, 1956, introduced this new provision making a firm liable to income-tax on its income at a special rate provided by it. The provision for including the shares of the profits of the firm within the total income of a partner in his individual assessment and levying tax upon it was also retained. This implies, that the share of the partners in the profits of the firm suffers tax twice—once in the hands of the firm and again in his own hands. This is really a double taxation of the same income though at different rates. [The same Finance Act, 1956, introduced a new provision [section 14(2) (aa)] under which the proportionate income-tax paid by the firm on the share of income included in the partners' share is deducted. It means that the partner is not liable to pay income-tax on the proportionate tax ; but it does not obviate the difficulty of double taxation].

(Note—It is understood that in the year 1957-58 there were 6651 registered firms which were assessed to a tax of crore 57 lakhs on a total income of about 51 crores)

Section 23(5) (a), 3rd Proviso, has been omitted, as it is in substance the same as the second proviso. It was introduced for the purpose of enabling persons going to Pakistan to be treated as non-residents. The necessity for any such special provision does not remain now.

Notes to clause 190

Paragraph (a)—Existing section 23 (5) (b) does not directly state the position that in the case of an unregistered firm the tax payable by the firm itself on the basis of its total income is to be determined. This is the primary mode of assessment of an unregistered firm, and has, therefore, in the draft, been stated at the opening of the clause in paragraph (a) (The existing words "instead of determining" are thus covered by this paragraph)

Paragraph (b)—The drafting changes that have been made are intended to state the position in more simple manner

Notes to clause 191

General—The provisions relating to procedure for registration of firms, as contained in existing section 26A, are sketchy, because many of the important provisions are at present contained in the rules. It seems desirable to collect together some of the provisions at present contained in the rules, and the draft clause has therefore, been made more elaborate

Sub-clause (1)—The existing words "constituted under" an instrument of partnership are found in practice to lead to unnecessary controversy based on sharp distinctions. They have, therefore, been replaced by the words "evidenced by"

The existing words "specifying the individual shares of the partners" have been construed too technically sometimes so that applications for registration are refused if the shares are not given in the partnership deed specifically in so many words or if the partnership deed is not self-contained and has to be read with the deeds relating to subsidiary firms in which the partners are interested. It is felt that registration should not be refused in such cases merely on the ground of the existence of such flaws in the partnership deed. Necessary drafting changes have been made to achieve this object

Sub clause (2)—It has been made clear that the application for registration may be made even after the dissolution of the firm

Sub-clause (3).—The persons who should join in an application for registration have been mentioned exhaustively in this sub-clause, which incorporates the second paragraph of rule 5 of the Income-tax Rules.

Sub-clause (4).—Under the existing provisions (rule 2 of the Income-tax Rules), the first application for registration has to be made within six months of the constitution of the firm or before the end of the previous year of the firm, whichever is earlier, if the firm was constituted in that previous year. Where a firm is already registered under the Partnership Act or the deed is registered under the Indian Registration Act, the application has to be made before the end of the previous year. It has been suggested that the 30th day of June of the assessment year should be adopted as the last date by which an application for first registration should be made. But the adoption of this time-limit would enable the assessee to get registered an antedated partnership. It seems desirable that, irrespective of the fact whether the deed is or is not registered under one or other of the laws referred to above, the application should in all cases be made before the expiry of the previous year. The reason is, that the assessee is claiming an advantage under the Act in respect of profits earned in the previous year on the basis that during that year the firm came into existence. If that is so, he must be able to make good that plea by a proper application made before the end of the previous year. If any more time is given, there will be ample scope for the assessee to make up his mind whether to get the firm registered or not and for that end to invent a partnership antedating the constitution for the entire period and bringing into existence a document evidencing such partnership.

The draft sub-clause under discussion gives effect to this proposal. A proviso has been added authorising the Income-tax Officer to entertain an application made after the end of the previous year in proper cases.

Sub-clause (5).—The provision contained at present in the rules, requiring the application to be accompanied by the instrument evidencing the partnership, has been incorporated in this sub-clause, and it has also been made clear that in fit cases a certified copy of the instrument may be accepted in lieu of the original.

Sub-clause (6).—The provisions contained in existing rule 3 of the Income-tax Rules and Form I below that rule, relating to particulars to be given in an application for registration, have been incorporated here, with changes intended to secure precision.

Sub-clause (7).—Under existing section 26A (2) an application for registration has to be made "at such times" as may be prescribed. The use of the word "times" suggests a necessity of renewal of registration every year. and under rule 6 of the Income-tax Rules, a fresh application has to be made for any subsequent year. This requirement

seems to be rather too hard, particularly in cases where there were no changes in the constitution of the firm after its first registration. So far as renewal is concerned it should suffice¹ if a declaration is made by the firm (along with the return of income for the assessment year concerned) to the effect that no change in the constitution of the firm or the shares of its partners has taken place in the previous year, where such a change has taken place, the firm will, of course, be required to apply for fresh registration vide sub-clause (8).

(7) Sub-clause (8)—See notes above under sub-clause

Notes to clause 192

Sub-clause (1)—The procedure to be followed by the Income-tax Officer in the enquiry for registration has been elaborately laid down. The ground on which application can be refused has been narrowed down so that if the existence of a genuine firm with the constitution shown in the instrument is established, registration has to be granted. It has also been made clear that a specific order granting or refusing registration should be passed by the Income-tax Officer.

Sub-clause (2)—This is intended to prevent the rejection of an application for registration on technical grounds. Where the formalities prescribed by the Act or rules are not complied with, the firm must be given an opportunity of rectifying the defect, so that the application may be considered on the merits.

Sub-clause (3)—See notes under sub-clause (2) above.

Sub-clause (4)—This is intended to expedite the disposal of applications for registration.

Sub-clause (5)—Existing rule 4 (1) of the Income-tax Rules provides that the Income-tax Officer shall record a certificate of registration on the instrument of partnership. This practice is sought to be codified in this sub-clause.

Sub-clause (6)—Does not exceed any comment.

Notes to clause 193

Sub-clause (1)—The power to cancel registration at present dealt with in the Rules has been dealt with here as it is a matter of substance. This clause is new but does not depart in substance from the provisions at present contained in the Rules. It has been made clear that registration can be cancelled only on the ground of misrepresentation. It has also been made clear that the firm must have an opportunity of being heard before the registration is cancelled, it has also been provided that registration can be cancelled only with the previous approval of the Inspecting Assistant Commissioner.

¹ Cf. 2 Report of the Taxation Enquiry Commission, (1953-54), Vol. 17, Ch. VIII, para 61, page 123.

Sub-clause (2).—Does not need any comments.

Sub-clauses (3) and (4).—These are new, but embody provisions which are hardly objectionable.

Sub-clause (5).—This is new and is intended to prescribe a time limit after which the registration cannot be cancelled.

Notes to clause 194

The words in existing section 26 (1) "or a firm has been newly constituted" do not exactly indicate what is intended. The preceding words "change in the constitution of a firm" would cover cases where the old firm continues, in the sense that some but not all the members of the firm are changed. In other words, where the firm consists of partners A, B and C, the dropping out of A and B and coming in of new partners D and E would merely be a case of change in the constitution of the firm¹. The words "a firm has been newly constituted" would, therefore, appear to be redundant. They have, therefore, been omitted in the draft, at the same time giving a definition of "change in constitution" so as to indicate its exact scope.

It may be added that where a firm is dissolved and a new firm is formed, the case can be left to be governed by existing section 26 (2).

Notes to clause 195

This is new in form, but merely provides that in the case of succession to business etc., of one firm by another, the provisions in existing section 26(2) will apply, unless it is a case of a change in the constitution of the firm. It has been inserted in this Chapter for the sake of comprehensiveness.

Notes to clause 196

Sub-clause (1).—Existing section 44, in so far as it relates to firms, has been incorporated here. A reference to the legal representative of a deceased partner has been added for the sake of comprehensiveness.²

Sub-clause (2).—Is new and is intended to maintain continuity in proceedings in cases where an assessment has already commenced before discontinuance or dissolution.³

Sub-clause (3).—Needs no comments.⁴

Notes to clause 197

This is new and is intended to give a list of provisions specially applicable to firms, for the sake of convenience of reference.

¹ Cf. *In re Gregory, and Co.* (1937) 5 I.T.R. 12 (Calcutta).

² Cf. draft clause 186 and notes thereto.

29—1 Law Com./58.

CHAPTER XVII SPECIAL PROVISIONS RELATING TO COMPANIES

Notes to clause 198

This clause is new and is intended to give a list of provisions specially applicable to companies which are scattered at several places in the Act. The list has been given for the sake of convenience of reference.

CHAPTER XVIII COLLECTION AND RECOVERY OF TAX

Notes to clause 199

This clause is new and is intended to make it clear that there is some kind of liability to pay tax in cases where tax is deductible at source or payable in advance. Such charge of tax which is implied in the obligation to pay tax in advance etc., has been brought out more directly in this clause.

Notes to clause 200

This clause brings together the provisions relating to direct payment of income-tax and of super-tax respectively, contained in existing sections 19 and 58 (2).

Notes to clause 201

General.—The scheme adopted in the draft is to deal in separate clauses with deductions in respect of the various classes of income, such as salary, interest, dividends etc. The substantive provision for deduction has been placed in the first few clauses while incidental provisions like certificate, etc., and consequences of deduction like credit, payment of tax by the person deducting etc., have been placed after those clauses.

Sub clause (1).—The existing words "at a rate representing the average of the rates applicable" have been replaced in the draft by the words "average rate of income-tax and average rate of super tax respectively, in force for the financial year in which the payment is made". This change has been made for the sake of precision. Further, the existing words "applicable to the estimated total income" under this head are slightly unhappy, the expression "total income" should be reserved for the total income from all sources in the previous year. The draft therefore uses the words "income of the assessee under this head for that financial year".

Sub-clause (2).—The existing provision to the effect that the person paying salary shall deduct income-tax at the maximum rate and also super-tax under section 17 (1)

(b) has been replaced in the draft, by the shorter expression "tax.....in accordance with" existing Section 17 (1).

Sub-clause (3).—Does not need any comments, since the drafting changes made are only consequential.

Sub-clause (4).—This is new and is intended merely to point to the deduction in respect of tax on accumulated balance paid to an employee participating in a recognised provident fund.

Sub-clause (5).—This is also new and is intended to point to the deduction of tax in the case of amounts paid to an employee participating in an approved superannuation fund.

Sub-clause (6).—This embodies the latter part of S. 18 (2A). The earlier part of that sub-section does not seem to serve any useful purpose; salary is now taxable wherever paid, and it does not seem necessary to make a special mention of the deduction in respect of salary payable to the assessee out of India by the Government.

Notes to clause 202

The provision for deducting the tax in respect of interest on securities has been embodied in this clause with the following drafting changes :—

- (i) the deduction in respect of income-tax and that in respect of super-tax have been stated in separate sub-clause for the sake of clarity;
- (ii) as regards deduction of super-tax in respect of companies, it has been made clear that the rate applicable is that in force for a company which has not made the arrangements referred to in existing section 18 (3D). This will remove the uncertainty at present experienced as to the exact rate applicable in such cases. (This clarification is not necessary in the case of deduction from salaries, since the situation of a company which receives salary is not likely to arise).

Notes to clause 203 -

The drafting changes made follow the lines of those made in existing section 18(3A)¹.

Notes to clause 204

The following drafting changes have been made—

- (i) The position regarding income-tax and super-tax, has been treated in separate sub-clauses;

¹ See notes to clause 202.

- (ii) in the case of a company, the rate applicable has been stated more precisely as in the case of deductions under the head "Interest on securities or on dividends",
- (iii) the concluding words of existing section 18 (3C) provide that the Income-tax Officer may determine the appropriate proportion of any sum chargeable to tax, and upon such determination tax shall be deducted "therefrom". The word "therefrom" does not clearly give out the sense that the deduction is to be limited to the proportion of the sum so determined. Suitable drafting changes have been made to make this clear.

Notes to clause 205

The provision authorising the Income-tax Officer to issue a certificate for deduction of tax at a lower rate, which has been repeated in the existing Act in the provisos to various sub-sections of section 18, has been embodied in this clause, which is applicable for all kinds of income. The drafting changes made are consequential on the scheme adopted in the draft. It has also been made clear that the Income-tax Officer can issue a certificate not only authorising the deduction at a lower rate but also authorising no deduction.

That part of existing section 18 (2B), Proviso, which relates to an order by the Income-tax Officer requiring deduction at a particular rate, has been omitted in the draft as unnecessary. In cases where a person desires deduction at a lower rate than the maximum, he can apply to the Income-tax Officer and obtain a certificate. Deduction at a higher rate is not contemplated since the rate applicable for deduction is in most cases the maximum rate. (In the case of salary, it is only the rate applicable to the income under that head and deduction at any other rate is not contemplated).

Notes to clause 206

This embodies existing section 18 (4) and does not need any comments.

Notes to clause 207

Existing section 18(5) deals with two topics :—

- (i) credit for tax deducted at source.
- (ii) credit for tax in respect of dividends as grossed up under existing section 16 (2)

For the sake of clarity, the first topic has been dealt with in this clause, while the second has been dealt with separately¹. The Proviso to this sub-section has, therefore, been broken up in conformity with the scheme adopted in the draft.

The first proviso to section 18 (5) has been incorporated for simplicity in the main para. of the sub-clause.

The second proviso to section 18 (5) has been incorporated in the 1st Proviso, and the words "or shareholders" have been added in order to cover a case where tax is deducted on dividends under existing section 18(3D). [The existing proviso does not make any specific mention of shareholders, presumably for the reason that existing section 44E (5) defines securities as including stock and shares.]

The third proviso has been embodied as the 2nd proviso.

The other drafting changes are consequential.

Notes to clause 208

This embodies existing section 18 (6) with a small drafting change converting the passive voice used in the existing section into the active voice.

Notes to clause 209

Existing section 18(7) has been embodied in this clause with the following changes :—

- (1) It has been made clear that in the case of deduction of tax on dividends under existing section 18 (3D), the principal Officer as well as the company can be treated as in default. This clarification has been considered desirable in view of the fact that the existing section 18 (3D) uses the expression "person".
- (2) Since existing section 46 (1) relating to the imposition of penalty by the order of the Income-tax Officer is in the draft proposed to be replaced by provision for automatic running of interest,² the proviso has been suitably altered.
- (3) Sub-clause (2) has been newly added for imposing a first-charge upon the assets of the person deducting tax, if it is not paid into the treasury office after deduction. The intention is to ensure speedy transmission of the amount deducted so that the amount may not lie in the custody of the person deducting it³.

¹ See Chapter on Tax deemed to have been paid on dividends.

² See clause 230(1).

³ Cf. Section 123 (6) of the (Canadian) Income-Tax Act, 1948.

Notes to clause 210

Existing section 18(8) has been embodied here without any change

Notes to clause 211

Existing section 18(9) has been embodied here without any change

Notes to clause 212

Existing section 18 (Explanation) has been embodied here with a small drafting change. Item (iii) has been amplified so as to cover all sums not chargeable as salary or interest on securities

Notes to clause 213

Existing section 7 (1), 2nd Proviso, provides that where tax is deductible at source under existing section 18, the assessee shall not be called upon to pay the tax himself unless he has received the salary without such deduction. This provision is at present confined to salary, but there seems to be no reason why it should not be extended to all kinds of income. It has, therefore, been incorporated in an extended form in this clause

Notes to clause 214

This is new and is consequential on the breaking up of existing section 18(5)

Notes to clause 215

General—Existing section 18A is cumbersome and difficult to understand. The difficulty arises by reason of the fact that sub-section (1) combines a number of things which could be dealt with separately. For the sake of simplicity, therefore, the section has been split up in the draft, so as to deal separately with the following topics —

- (1) income subject to advance tax,
- (2) conditions of liability to pay advance tax;
- (3) mode of computation of tax,
- (4) order by the Income-tax Officer, which fixes the liability,
- (5) instalments,
- (6) estimate made by the assessee,
- (7) commission receipts,
- (8) interest payable by Government or by assessee;
- (9) other provisions

Sub-clause (1).—Income subject to advance tax has been described here, and for the sake of accuracy it has also been made clear that capital gains are not included in that income. Though existing section 18A (12) has been retained in the draft, it appears desirable to make this clarification at this stage also.

Sub-clause (2).—This is new, but is intended merely to enable the use of the shorter expression "income subject to advance tax" and "advance tax" in the subsequent clauses.

Sub-clause (3).—This is new and is intended to provide that advance payment of tax will, so far dividends are concerned, apply only for super-tax. So far income-tax is concerned, it is the company which is deemed to have paid the tax, and advance payment should not apply for income tax on dividends.

Notes to clause 216

The concept that advance tax is payable where the total income of the assessee exceeded a certain limit, or is likely to exceed a certain limit, has been embodied in this clause; for the sake of comprehensiveness, the case dealt with in existing section 18A (3) has also been referred to here.

Notes to clause 217

The mode of computation of advance tax has been dealt with in this clause. For the sake of facilitating the proper understanding of the method to be adopted, the process has been divided in various steps. Thus, the first step is the ascertainment of the total income of the latest previous year assessed. This having been ascertained, the second step is to find out how much of that total income falls under the category of income subject to advance tax. That having been done, the next step is to actually compute the tax on the income subject to advance tax by applying the average rate of tax. The result arrived at is the amount of the advance tax.

There are, of course, two special situations, which require mention. One is, the situation where a non-resident chooses to adopt the method of taxation on the basis of the total world income. This is contained in existing section 18A(1)(a) main para, latter half, and has been embodied in the draft sub-clause (b). The second situation is that in which the assessee sends an estimate of his total income etc. Here the tax is calculated with reference to the total income so estimated. This follows from existing section 18A(2) and (3) and has been incorporated in sub-clause (3) in the draft.

Section 18A(1)(a), 2nd Proviso, has been incorporated in the Explanation.

¹ See draft clause 228.

Notes to clause 218

A portion of section 18A(1), dealing with the order of the Income-tax Officer, has been embodied in this clause. The words "where a person has been previously assessed" in the opening portion in the draft, merely state what is implied in the existing section.

Sub-clause (2) makes it clear that the instalments are to be mentioned in the notice of demand. That is the existing practice also.

The third proviso to existing section 18A(1)(a), under which the income-tax Officer is authorised to issue an amended order in a case where an assessment of the assessee for a later previous year is completed in the meantime, has been embodied in sub-clause (3).

Notes to clause 219

The instalments of advance tax have been stated separately in this clause. The drafting changes made are consequential on the scheme adopted in the draft.

Notes to clause 220

The provision regarding estimate by the assessee is embodied here. The estimate should mention—

- (i) the total income as estimated for the period concerned,
- (ii) the income subject to advance tax as estimated for that period, and
- (iii) the advance tax itself.

This has been made clear in the draft, in sub-clauses (1) & (2).

An assessee may desire to file an estimate under existing section 18A(2) when the estimated advance tax is less than the amount demanded by the Income-tax Officer, either because—

- (i) the estimated total income is less, or
 - (ii) the estimated income subject to advance tax is less, than that assessed by the Income-tax Officer.
- This is made clear in sub-clause (1).

Sub-clause (4)—Is new and is intended to provide that the estimate of advance tax will be filed in the prescribed form and in the prescribed manner.

Notes to clause 221

Section 18A(4) is embodied here with the following changes —

- (1) the words "income to which sub-section (1), (2) or (3) apply" have been replaced by the words "income subject to advance tax" in conformity with the scheme adopted in the draft

- (ii) The proviso to the existing sub-section provides for payment of 6 per cent. simple interest. In view of the fact that the rate of interest in the other sub-sections of section 18A is now reduced to 4 per cent¹ the rate has, in the draft, been reduced to 4 per cent. in this case also.

Notes to clause 222

Sub-clause (1).—Existing section 18A(5) relating to interest payable by the Central Government on tax payable in advance has been embodied here. The sub-section, as amended in 1953, raises a difficult question of interpretation. The main part of the sub-section provides that interest should be paid (at 4 per cent.) on any sum paid after 1st April, 1955, "from the date of payment to the date of the provisional assessment" or to the regular assessment as the case may be; but the second proviso, inserted in 1953, says that for the period beginning with 1st April, 1952, the interest is payable from the beginning of the next financial year to the date of the regular assessment. There is thus a change as regards the *period* for which interest is to be paid. Another change made in 1953 is as regards the *amount* on which interest is payable. While the main para. provides that interest is payable "on any amount payable in accordance with the provisions of this section and paid accordingly", the second proviso, inserted in 1953, provides that for the period beginning with the 1st April, 1952, interest is payable only on the amount by which the aggregate of the instalments paid during the financial year *in which they are payable exceeds the tax* under the regular assessment.

Now the question is, whether, these changes inserted by the 1953 Act in the shape of the second proviso are to govern the whole of the post-1952 period; or whether they are to apply only in respect of the post-1952 and pre-1955 period. If the second proviso is taken as over-riding the main para, the former view is correct. If, on the other hand, the proviso is taken as limited to the period between 1952 and 1955 (on the theory that a proviso is not to replace the main section), the second view can be supported.

The main draft of the clause under discussion embodies the former view, which seems to be the prevailing view. But, if the latter view is adopted, it can be given effect to by the alternative draft given below :

Alternative draft²

- (1) The Central Government shall pay simple interest at four per cent. per annum on any amount payable as advance tax in accordance with the provisions of

¹ See existing section 18A (5), item (ii) and section 18A (6), 1st Proviso.

² The alternative draft is intended to incorporate the view that section 18A (5), 2nd Proviso, is applicable only for the period 1952-1955 and does not override the main sub-section.

section [18A(1) (2) (3) and (4)] and paid accordingly, from the date of payment to the date of the provisional assessment made under section [23B], or, if no such assessment has been made to the date of the regular assessment

Explanation—Same as in the main draft

(2) Same as in the main draft

Notes to clause 223

Interest payable by the assessee has been dealt with in this section. The 1st proviso to existing section 18A(6) has been combined with the main paragraph.

One important change made is, that interest is not to run from the 1st day of January of the year in which the advance tax is paid but from the 1st day of April in the next financial year. This change has been made in view of the fact that interest payable by the Central Government runs from the 1st day of April of the next financial year, [vide existing section 18A(5)].

Existing section 18A(6), 4th proviso, which provides that in the case of a business etc newly set up, the interest is computed in certain cases from the 1st April of the financial year next following, has been omitted, since the rule embodied in that proviso has, in the draft, to apply in all cases and no separate provision is necessary.

Notes to clause 224

The only change made in the existing section 18A(7) is the reduction of the rate of interest payable by the assessee (in cases of under-estimate) from 6 per cent to 4 per cent. This change has been made in view of the fact that the rate of interest under section 18A(5) and section 18A(6) is also 4 per cent under the existing Act.

Notes to clause 225

Sub-clause (1)—It would be useful here to summarise the existing position regarding interest payable by the assessee with reference to an advance tax. The position can be analysed as follows —

- (a) interest in a case of estimate seems to be dealt with in the following provisions for different situations —
 - (i) faulty estimates (that is estimated income falling short of 80 per cent of the income regularly assessed)—Section 18A(6),
 - (ii) deliberate under-estimate of tax in the first three instalments—Section 18A(7)(a),

- (iii) under-estimate, where estimate is necessary under section 18A(3)—Section 18A(8);
- (b) If there is a deliberately false estimate of the income, the assessee may also become liable to a *penalty* under section 18A(9)(a); and similarly, if there is a failure without reasonable cause to file an estimate when required under section 18A(3), the assessee is also liable to pay a *penalty* under section 18A(9)(b);
- (c) in cases where the aspect of estimate is not material and the emphasis is on *non-payment* of advance tax due either by virtue of an order under section 18A(2) or section 18A(3), interest can be charged under section 18A(8) and the assessee is also liable to be dealt with under section 18A(10).

Sub-clause (2).—This is new. It seems desirable to make it clear that section 18A(6), 3rd and 5th Provisos, apply to interest payable under this section. Hence this sub-clause.

Notes to clause 226

This clause does not need any comments.

Notes to clause 227

The drafting changes are very minor and do not need any comments.

Notes to clause 228

Existing section 18A(12) has been embodied here, and for the sake of clarity it has also been provided that the expression "total income" occurring in the previous clauses should not include capital gains. Even though the clause dealing with incomes subject to advance tax¹ excludes capital gains, the general provision has been repeated here for convenience.

Notes to clause 229

General.—The provisions relating to recovery of tax by the Department, contained in the present sections 45 and 46, have been broken up for the sake of simplicity into various clauses in the draft. The general provision relating to dates etc. of payment is placed first; the penalty provisions contained in existing section 46(1) is placed next. Then follow the various modes of recovery, namely,

- (1) certificate,
- (2) other modes of recovery.
- (3) recovery by the State Government,
- (4) special provisions for recovery of Indian tax in Pakistan and *vice versa*.

¹ See draft clause 215 (1).

Miscellaneous provisions come at the end

Sub-clause (1)—Existing section 45, main para, provides that any amount specified in a notice of demand under section 23A(3) or section 29 or section 31 or section 33 shall be paid within a particular time etc. Since, however, under section 29, a notice of demand is to be issued in all cases where any tax, penalty or interest is due under the Act, it does not appear to be necessary to mention any section except section 29. The draft, therefore, mentions section 29 only. The time-limit for payment has been mentioned in a simplified form.

Sub-clause (2)—This is new. It appears desirable to incorporate an express provision in the Act authorising the Income-tax Officer to extend the time for payment or allow payment by instalments. Hence this sub-clause.

Sub-clause (3)—Refers to the provisions for treating the assessee as in default.

Sub-clause (4)—This is new and is consequential on sub-clause (2) of the draft which is also new.

Sub-clause (5)—It has been made clear that the power to treat an assessee who has appealed as not in default, is confined to the amount in dispute and it has also been made clear that this power can be exercised even though the time for payment has expired.

Sub-clause (6)—Does not need any comments.

Notes to clause 240

Existing section 46(1) provides that where an assessee is in default the Income-tax Officer may levy a penalty not exceeding the amount in default. Under existing section 46(1A) the Income-tax Officer may make the initial order for an amount lower than the total arrears and may go on enhancing the penalty (in the case of a continuing default) subject to the limit that the total penalty shall not exceed the total arrears. These two sub-sections embody a position which is not satisfactory. In the first place they leave the matter to the discretion of the Income-tax Officer. In the second place, sub-section (1A) is not happily drafted. It creates a number of doubts as to the exact amount up to which the Income-tax Officer may impose the penalty at a particular time. Speedy collection of tax would be facilitated if interest is to run automatically from the date of default. Taking into account these considerations, the draft proposes simple interest at the rate of 10 per cent from

¹ It may also be pointed out that sect. on 23A (3) referred to in existing section 45 has been repealed by the amendment made in 1957.

² Cf. section 270 of the Australian Income tax etc. Act 1936-1937 (rate being 10 p. c.). Also see section 54 (1) of the Canadian Income tax Act 1948 (where the rate is 6 p. c.) and section 49 (1) U. K. Income-tax Act 1952 (where the rate is 3 p. c.).

the date of default to the date of payment, and does away with the necessity of any express order by the Income-tax Officer. It would also reduce the number of appeals.

Under the scheme adopted in the draft, existing sub-section (1A) becomes unnecessary and has been omitted.

Sub-clause (2).—This is intended to provide¹ that if arrears are paid within three months, the interest levied or leviable on the arrears will be remitted.

Sub-clause (3).—Does not need any comments.

Notes to clause 231

Existing section 46(2) provides that the Income-tax Officer may forward to the Collector a certificate of arrears and the Collector shall then proceed to recover the amount "as if it were an arrear of land revenue". Since the law relating to recovery of land revenue varies from State to State, it seems desirable to state the permissible modes of recovery in the Act itself. Sub-clause (1), therefore, enumerates these modes, which are taken from the Code of Civil Procedure.

The proviso to existing section 46(2) lays down that the Collector shall, for such recovery, have the powers of a civil court also. Since the various modes of recovery are being listed in the clause itself, this proviso becomes unnecessary and has not been reproduced in the draft.

Sub-clause (2).—Does not need any comments.

Notes to clause 232

This is new. There are some doubts as to the Collector to whom the Income-tax Officer can send the certificate referred to in section 46(2). The draft clause provides that the Collector within whose jurisdiction the assessee carries on his business etc., or resides or has any property, can be approached.

Sub-clause (2).—Provides for the procedure where the Collector to whom the certificate is initially sent is not able to recover the arrears.

The explanation makes it clear that the Collector of any district in India can be approached (even though the district is situated in other State). (This would avoid the necessity to have recourse to the procedure under the Revenue Recovery Act (1 of 1890). "Additional Collectors" have also been included in the definition of "Collectors" as difficulty was experienced having regard to the provisions of the General Clauses Act defining Collector. That definition, if strictly construed, would not include an Additional Collector.

¹ Cf. section 495 (2), U. K. Income-tax Act, 1952.

Notes to clause 233

This is new and is intended to make it clear that the correctness of the assessment shall not be questioned before the Collector. Sub-clause (2) saves the right of the assessee to apply to the Income-tax Officer for withdrawal of the certificate. Sub-clauses (3) and (4) lay down that the Income-tax Officer may correct the certificate, in which case he should inform the Collector.

Notes to clause 234

This is new. The object is (i) to ensure that the Income tax Officer and the Collector remain in touch with each other and (ii) to lay down the procedure in cases where after the issue of a certificate time is granted for payment of tax, or the demand is reduced.

Notes to clause 235

Sub-clause (1)—Does not need any comments

Sub-clause (2)—The only change made is the addition of a restriction to the effect that salary etc exempt from attachment under the Civil Procedure Code will be exempt for this sub clause also

Sub-clause (3)—Slight verbal changes have been made in existing section 46(5), for the sake of simplicity and precision

Existing section 46(5A) 5th paragraph, provides that where the person to whom a notice under this sub-section is sent does not pay amount concerned further proceedings may be taken 'by and before the Collector on the footing that the Income-tax Officer's notice has the same effect as an attachment' etc. This language is not very happy and has been replaced in the draft by a simpler provision to the effect that further proceedings may be taken as if the amount were an arrear of tax and that the notice shall have the effect as an attachment of debt by the Collector

Sub-clause (4)—This is new and is intended to enable the Income-tax Officer to apply to a court holding money belong to the assessee for payment of the tax due from the assessee

Sub-clause (5)—Existing section 46(3) contemplates in certain cases the recovery of arrears by the Income-tax Officer by any process authorised by the 'municipal law for the recovery of municipal taxes'. One of the processes usually found in municipal laws is distraint and sale of movable property. Sub clause (5) read with the third Schedule deals with this process. It seems unnecessary to retain any of the other modes of recovery provided for by Municipal Acts

* See also draft clause 233 (4)

Notes to clause 236

Does not need any comments.

Notes to clause 237

Does not need any comments.

Notes to clause 238

Does not need any comments.

Notes to clause 239

This clause does not need any comments.

Notes to clause 240

Existing section 47 has been incorporated here. The only addition made is the reference to the provision corresponding to section 18A(9) for the sake of comprehensiveness.

Notes to clause 241

Sub-clauses (1) to (3).—Do not need any comments.

Sub-clauses (4) and (5).—These are new. Since there are many ships or aircraft which carry passengers outside India, it seems desirable to require the owners of the aircraft or ships etc. to furnish a list of the persons who travelled by the ship etc. in the preceding months. In the absence of any such provision it becomes difficult to put into force the provisions of section 46A(2), since the Income-tax authorities have no information in their possession as to the persons who travelled in the ship or aircraft belonging to the person concerned against whom section 46A(2) is directed.

Sub-clause (5).—Provides that the liability enforceable against the owners etc. of such ships etc. will not be enforced after two years of the date on which the list is filed. It gives a concession and will ensure the prompt filing of such list.

Sub-clause (6).—Does not need any comments.

Notes to clause 242

The time limit for commencing recovery proceedings contained in the existing section 46(7), has been dealt with here. For the sake of simplicity, the limit has been expressed in all cases (*vide* the proviso in the draft) as commencing from the last day of the financial year concerned. Under this scheme, it becomes unnecessary to reproduce section 46(7), 2nd Proviso.

Notes to clause 243

The only addition made is the clarification in sub-clause (b) to the effect that the Government may also institute a suit for recovery of arrears

Notes to clause 244

Existing section 23B(5) has been incorporated here. The provision was inserted only for the avoidance of doubt's, it has, however, not been disturbed in the draft

Notes to clause 245

This clause does not need any comments

CHAPTER XIX

TAX DEEMED TO HAVE BEEN PAID ON DIVIDENDS

Notes to clause 246

Existing section 18(5) deals in part with credit to be given in respect of the tax deemed to have been paid on dividends. Existing section 49B also contains some provisions on income-tax. All these provisions have been combined in this clause, without any change of substance. The drafting changes made are consequential on the breaking up of section 18(5)

The opening portion of section 49B(1), i.e., the words "where any dividend has been paid to any of the persons specified in section 3" etc., has been omitted, as unnecessary, particularly in view of the fact that section 3 as proposed in the draft does not enumerate the chargeable entities

A proviso has been added to deal with cases where the share is held by partners. The existing proviso regarding persons not constituting partnership may be compared

CHAPTER XX

REFUNDS

Notes to clause 247

General

Existing section 48 dealing with refunds is confused in its arrangement. The general right to claim refund dealt with in existing sub-section (1), is mixed up with provisions relating to special situations in sub-section (3). Further, the restriction regarding questions that can be

raised in refund proceedings is unnecessarily put in the same section in sub-section (4). An attempt has, therefore, been made, in the draft, to separate these various topics.

Clause 247—The following drafting changes have been made in existing section 48(1):—

(i) The words “any individual, Hindu undivided family” etc. have been replaced by one word “person”. Existing section 3, as proposed in the draft, uses only the word “perscn”;¹ and it is felt that the right to claim refund should be co-extensive with the liability to tax. In the case of State Governments, it may be pointed out, there is a prohibition against tax being charged from them, under the Constitution. Even in respect of shares held by State Government, refund of tax deemed to have been paid under existing section 49B is allowed only if the dividend is included in the total income of the person concerned: see existing section 49B(1). There is, therefore, no harm in using the word “person” in section 48(1).

(ii) The existing provision empowers the grant of refund by the Income-tax Officer, “or other authority appointed by the Central Government in this behalf”. It is understood that the Central Government has not appointed any such authority and the need for such appointment is not likely to arise. The words in question have, therefore, been omitted.

(iii) Other changes are minor.

Notes to clause 248.

Sub-clause (1)

Existing words “such other person only” have, in the draft, been replaced by the words “the latter alone”, for simplicity.

Sub-clause (2).

Existing section 49F has been embodied in this sub-clause with the following changes:—

(1) the words “who would but for such cause have been entitled to a refund under any of the provisions of this Act” have been omitted, as unnecessary.

(2) References to sections 48 and 49 have been deleted: it may also be pointed out that section 49 was repealed in 1948.

(3) Besides executors etc., a reference to guardians has been added.

¹ See draft clause 3.

Notes to clause 249.

Sub-clause (1)

This is new and embodies a provision at present contained in the rules

Sub-clause (2)

The main paragraph of existing section 50 has been embodied in this sub-clause, with slight verbal changes. The two provisos to that section have been omitted, as not applicable to future assessment years

The starting point of limitation has been expressed in a more simple manner

Notes to clause 250

Existing section 48(2) has been incorporated in this clause, and it has also been made clear that the Income-tax Officer shall make the refund without any express claim by the assessee

The words 'except as otherwise provided in this Act' are intended to cover cases where payment of refund is postponed under any express provision of the Act; for example, existing section 66(7), proviso, latter half

Notes to clause 251.

Existing section 48(4) is unnecessarily elaborate. The propositions enacted in that section can be expressed in simple language, without using the words "nothing shall operate to validate any objection or appeal which is otherwise invalid", or the words "to authorise the revision of any assessment". The concluding lines of the section, dealing with refund of tax payable before the 1939 Amendment Act, are also obsolete now. The draft clause therefore, attempts to simplify the section, keeping in mind the considerations stated above

Notes to clause 252

This is new. If after a refund application is made under this Chapter, the Income-tax Officer does not make an order within three months, the assessee should be entitled to interest at the rate of 2 per cent on the amount to be refunded. In the Taxation Enquiry Commission Report¹ the complaint of delays in making refunds was considered. After an analysis of the figures, the Commission pointed out that nearly 86% of the claims for refunds were disposed of within the year in which they were received, and 60% were less than three months old, while only 13% were over a year old. It was represented to them by the Department that under administrative instructions it was obligatory on the part of the Income-tax Officer to dispose of

¹ T E C Report, 19 3-19 4, Vol II, page 214, Chapter XIII, para 11

refund claims within three months. In view of this, it is obvious that normally the refund applications are disposed of, (at any rate at present) within a period of three months. The Department will not, therefore, be affected by a provision for payment of interest. The provision is intended only to make sure that the representation made to the Taxation Enquiry Commission by the Department would invariably be followed with no exception. The liability to pay interest will act, as an incentive for an early disposal of the refund applications and allay the fears of the assesseees that there might be delay in the disposal of refund applications.¹

Notes to clause 253.

The only change is the addition of a requirement to the effect that the Income-tax Officer shall, while making an adjustment under this section, intimate the assessee.

CHAPTER XXI.

APPEALS AND REVISIONS.

Notes to clause 254.

General.

The provisions of the Act relating to appeals and revisions are scattered in existing sections 30, 31, 33, 33A, 33B, 66A and 67A. Existing section 66, dealing with reference from the Appellate Tribunal to the High Court, is also in a sense, connected with appeals. There are, also provisions authorising appeals in existing sections 58B(4) and 61(3), proviso to clause (b).

An attempt has been made to bring all these provisions together in this chapter. In order to facilitate their proper understanding, the provisions have been arranged according to the authority to which the appeal lies. Thus, appeals, from the Income-tax Officer to the Appellate Assistant Commissioner are dealt with first, under one group. Appeals from the decisions of the Appellate Assistant Commissioner are dealt with in a separate group and so on. Provisions regarding revision are placed in a separate group, and miscellaneous provisions are placed at the end.

In each group, the order against which appeal is allowed is specified first, and the form of appeal, limitation and procedure are dealt with next; where necessary, powers of the appellate authority have been dealt with specifically and separately.

¹ It may be added here that the Income-tax Investigation Commission (1948) had also made a similar recommendation for interest on refunds where disposal of the application is delayed for more than six months, *vide* its report, page 125, para. 279.

Appeals to the Appellate Tribunal have been replaced by appeal to the High Court, for reasons explained in the body of the report

Clause 254

The following changes have been made in the existing section 30, sub-section (1), main para —

(i) The existing words "any assessee objecting to the amount" etc have been replaced by the words "any assessee aggrieved by", which seem to be more appropriate

(ii) The existing section allows an appeal as to the amount of income assessed under section 23 "or section 27". It is, however, unnecessary to mention section 27 separately in this context, since, even when section 27 is used, the ultimate assessment is really made under section 23 itself, as is clear from the concluding words of existing section 27. This reference has, therefore, been omitted

(iii) It has been made clear that an objection as to status under which the assessee is assessed can also be raised by way of appeal

(iv) The existing section allows an appeal in respect of loss computed under section 24. Since, however, the computation of loss is also a part of assessment under existing section 23, this reference has been omitted

(v) The existing section allows an appeal from an order refusing "to make a fresh assessment under section 27. These words have been replaced by the words "to reopen an assessment", which are more easily intelligible

(vi) The existing section allows an appeal from orders under section 46(1). Since, however, section 46(1) is in the draft proposed to be replaced by a provision authorising the automatic running of interest, the question of appeal does not arise, and this reference has been omitted

(vii) The existing section allows an appeal under sections 49 and 49F. Section 49 was repealed in 1948 and section 49F does not authorise any independent order of refund, but merely enables an executor etc to claim refund. The order itself is passed under section 48. The references to sections 49 and 49F have, therefore, been omitted.

(viii) A new provision authorising appeals in respect of orders under existing section 35 has been added. It is desirable¹ to allow appeals from such orders passed by the Income-tax Officer, particularly since an order under section 35 may aggrieve an assessee who desires rectification.

(ix) The various orders relating to interest under existing section 18A have also been made appealable in the appropriate cases².

(x) The sections under which a penalty can be imposed, have been described more elaborately in order to make the position regarding appeals from such penalty clear.

(xi) The following orders have been made appealable:—

(i) an order passed by the Income-tax Officer on an assessee's application for withdrawal or cancellation of a certificate.

(ii) order passed by the Income-tax Officer refusing any assessee's request to treat him as not in default, in view of an appeal.

Notes to clause 255

This embodies existing section 30, sub-section (1), 2nd Proviso. The language has been slightly simplified.

The first Proviso to section 30, sub-section (1) deals with an appeal against an order under existing section 46 (1). This has been omitted as unnecessary in the scheme adopted in the draft³.

The third Proviso to section 30, sub-section (1), prohibiting an appeal by a shareholder, in a company in respect of which an order under existing section 23A has been passed, has also been omitted as unnecessary, since, under section 23A as amended up-to-date, the income of a shareholder is not affected directly and the question of his being aggrieved by any such order does not arise.

Notes to clause 256

No comments are needed.

Notes to clause 257

Sub-clause (1).—Does not need any comments.

Sub-clause (2).—Existing section 30(2), dealing with the time limit within which the appeal may be presented from the order of the Income-tax Officer, describes in an elaborate manner the date from which the time limit is to be counted. It does not appear to be necessary to have such

¹ Cf. I. T. T. C. Report, 1948 para. 274, page 113.

² Vide draft clause 274 (i) and Explanation.

³ See notes to draft clause 254.

elaborate provision, and it would be sufficient if the starting point is described as the date on which the order is intimated. The provision, has, therefore, been simplified in the draft. Where the appeal is in respect of tax, interest or penalty, it will of course be useful to deal with the time limit specifically (vide paragraphs (a) and (b) of the draft sub-clause)

Sub-clause (3) — Does not need any comments

Notes to clause 258

Sub-clause (1) — Does not need any comments

Sub-clause (2) — The persons entitled to be heard at the appeals have been listed, cf existing section 31(3) 2nd Proviso

Sub-clauses (3), (4) and (5) — do not need any comments

Sub-clause (6) — This is new. Some guidance as to the contents of the appellate orders appears to be desirable and hence this sub-clause

Sub-clause (7) — Does not need any comments

Notes to clause 259

Sub-clause (1) — Existing section 31(3) deals elaborately with the various kinds of appellate orders that can be passed by the Appellate Assistant Commissioner. It does not, however, appear to be necessary to make such an elaborate provision, it should suffice if only the important cases of appeal against assessments or penalties are dealt with specifically. In the remaining cases, the power to pass such orders as the Appellate Assistant Commissioner thinks fit should suffice. The draft sub-clause has been simplified on these lines

Sub-clause (2) — Does not need any comments

Explanation. — This is new and is intended to codify a rule which is well recognised, namely, that the Appellate Assistant Commissioner is not confined to the points raised by the appellant in the appeal. He may re-determine any matters which fell to be decided by the Income-tax Officer in the course of the assessment or other proceedings.

Notes to clause 260

Sub-clause (1) — The only important change worth mentioning is the addition of paragraph (c)

Since appeals to the Tribunal are proposed to be replaced by appeals to the High Court, consequential changes have been made in this and subsequent clauses

¹ See the judgment of Chagla C.J. in *Narandas Manohardas v. CIT*, (1957) 31 I.T.R. 909 quoted with approval in *CIT v. McMillan and Co.*, (1958) 33 I.T.R. 182, 193 S.C.

² I see notes to clause 254 under the head "General"

It has been held that an order by the Appellate Assistant Commissioner, holding that there was no sufficient reason for excusing delay in filing an appeal and rejecting the appeal as time-barred, is an order under section 31, and an appeal lies from such order¹. It has been observed that,—

“If the appeal is dismissed as incompetent or is rejected as it was filed out of time and no sufficient cause was established, it results in an affirmation of the order appealed against.”²

To cover such orders, para. (c) has been added in sub-clause (1). (No such addition is considered necessary in the section dealing with appeals to the Supreme Court, since the language of the relevant provisions for these appeals is not likely to raise the question that arose with reference to the appeals from the Appellate Assistant Commissioner).

Notes to clause 261

Sub-clause (1).—The time limit for filing an appeal from the order of the Appellate Assistant Commissioner is, at present, dealt with in section 33(1) and 33(2). These have been combined in this sub-clause without any change of substance.

Sub-clause (2).—Does not need any comments.

Notes to clause 262

The form of appeal etc. has been left to be prescribed by rules made by the Supreme Court.

Notes to clause 263

This clause deals with the powers and procedure of the High Court. No detailed comments are needed.

As to rules by the Supreme Court, see notes to the relevant draft clause³.

Notes to clause 264

This clause does not need any comments.

Notes to clause 265

This clause provides that a copy of the appellate order of the High Court shall be sent to the assessee also, besides the Commissioner and the Appellate Assistant Commissioner. This will encourage the speedy implementation of the High Court's judgment.

¹ *Mela Ram and Sons vs. C.I.T.* (1956)-29 TR. 607 S.C.

² *C.I.T. vs. Shahzadi Begum* (1952) 21 ITR.1, 11.

³ Draft clause 277.

Notes to clause 266

This clause does not need any comments

Notes to clause 267

Sub-clause (1)—This is new and is intended to make it clear that any refund consequential on the decision of the High Court must be made unless the High Court authorises the postponement of its payment¹

Sub-clause (2)—This sub-clause provides for postponement, pending appeal, of any refund consequent on an order of the High Court, if the Commissioner communicates his intention to appeal to the Supreme Court

The rate of interest is at present fixed by the Commissioner. The draft transfers this powers to the High Court. Since the appeal is heard by the High Court, it is proper that this power should also rest with the High Court

Notes to clause 268

No comments are needed for this clause

Notes to clause 269

Sub clause (1)—Does not need any comments

Sub-clause (2)—Is new, existing section 66(6) may be compared

Existing section 66A(4) provides that where the judgment of the High Court is varied or reversed in appeal, effect should be given to the order of the High Court in the manner provided in section 66(5) and section 66(7). The reference to section 66(7) is, apparently, not to its main paragraph but to its proviso. This has been brought out in the draft. This is clear from the words "effect should be given" in section 66A(4)

Existing section 66A (3), 1st Proviso, says that the sub-section is not to affect the provisions of section 66 (6) or section 66 (7). This has been incorporated partly in the proviso to this sub-clause and partly in a subsequent clause².

Notes to clause 270

This is merely intended to point to the provision authorising appeals to the Central Board of Revenue

Notes to clause 271

No comments are needed

¹ Compare existing section 48 (2)

² ~~1~~ ² ~~1~~ draft clause 273

Notes to clause 272

General

The power of revision by the Commissioner at the instance of the assessee is at present dealt with in existing section 33A(2). Existing section 33A(1) is also mainly meant for cases where revision proceedings are started for passing orders not prejudicial to the assessee. There is no harm if both these sections are combined in one section. Some of the provisions contained in these two sections are common to the proceedings under the two sections. An attempt has, therefore, been made to combine them in this clause. No change of substance will result from such combination, since, wherever necessary a distinction has been drawn between a revision at the instance of the assessee and a revision at the instance of the Commissioner.

Sub-clause (1).—Only verbal changes have been made, apart from the change discussed above.

Sub-clause (2).—Is new and self-explanatory.

Sub-clause (3).—Existing section 33A(1), Proviso (c), has been incorporated here.

Sub-clause (4).—

It has been made clear¹ that the limitation of one year runs from the date on which the order is communicated to the assessee or on which he otherwise comes to know of it. Existing section 33A(2) counts limitation from the date of the order, which might cause hardship in some cases.

Sub-clause (5).—Existing section 33A(1), provisos (a) and (b) and section 33A(2), Provisos (a), (b) and (c) have been embodied here. Cases where an appeal has not been made are dealt with in draft paragraphs (a) and (b), while the case where an appeal is pending is dealt with in paragraphs (c) and (d).

The existing wording "the order.....has been made the subject of an appeal" is not very clear, since it does not show whether it deals with a pending or a decided appeal. The draft makes it clear that these words will apply both in a case where the appeal is pending and in a case where the appeal has been disposed of on the merits. Cases where the High Court has disposed of the appeal otherwise than on merits should not, it is felt, be taken out of the purview of the Commissioner's revisional powers.

Sub-clause (6).—Does not need any comments.

Explanations 1 and 2 do not need any comments.

Notes to clause 273

The substance of existing section 66(7) and of existing section 66A(3), 1st Proviso, part, has been embodied here in simplified language.

¹See also notes to clause 269.

Notes to clause 274

No comments are needed

Notes to clause 275

Existing sections 31(4) and 33(5) provide that where as a result of an appeal the assessment of a firm etc is changed or a firm etc is newly assessed the Appellate Assistant Commissioner or the Tribunal, respectively, may authorise the Income tax Officer to amend the assessment of any partner of the firm or member of the association. This provision has been incorporated here with the following changes —

- (1) The provision has been made applicable for appeals to the High Court and the Supreme Court
- (2) It has been provided that the Income-tax Officer shall make all amendments necessary for carrying out orders of the appellate authority, irrespective of whether the appellate authority gives a direction or not

Notes to clause 276

Existing section 67A has been embodied here with slight alterations. The present section authorises the exclusion of time taken for obtaining a copy of the order. However if the assessee is furnished with a copy of the order along with the notice of the order, then the concession need not be made available to him. The provision has, therefore, been altered accordingly. Further, the provision has been extended to applications for revision also.

Notes to clause 277

This is new. The power to make rules regulating the powers and procedure of the High Court (in appeals under the Act) is proposed to be conferred on the Supreme Court so that there may be uniformity throughout India. The corresponding provision in the Companies Act 1956 (section 643) may be compared.

Notes to clause 278

Para (a) — Does not need any comments

Para (b) — Is new. Since the word status has been used in the draft clause dealing with appeals from the orders of an Income-tax Officer it is considered that a definition of that word might be useful.

CHAPTER XXII

PENALTIES IMPOSABLE BY INCOME-TAX AUTHORITIES

Notes to clause 279

This embodies existing section 44F(6) in so far as it deals with imposition of a penalty. The existing section says that if the person concerned fails to comply with the notice

issued by the Income-tax Officer (requiring him to furnish particulars relating to securities). "he shall be liable to a penalty" etc. The words "he shall be liable to" have, in the draft, been replaced by the words "the Income-tax Officer may direct that such person shall pay" etc. This will secure uniformity with existing section 28(1), main para.

Notes to clause 280

General.

The constitutionality of section 28(1)(c) has been upheld by a Division Bench of the High Court of Madras¹. The attack on the validity of this section in that case was based on the argument that under sections 28 and 51-52, the Inspecting Assistant Commissioner has a choice as to whether a penalty should be levied on the assessee or whether the assessee should be prosecuted under sections 51-52. The course to be pursued by the department is, it was argued, left to the unfettered discretion of the Inspecting Assistant Commissioner and the enactment gives no guidance and prescribes no standard. This argument was rejected by the High Court, which observed that section 28(4) was in the nature of a concession and there was no question of article 14 of the Constitution being attracted to invalidate it. Sections 51-52 had been enacted for vindicating public justice and for the punishment of the offender for the deliberate infraction of the law, while section 28 is enacted for the purpose of rendering evasion unprofitable and of securing to the State compensation for damage caused by attempted evasion. The two sections do not always overlap; but even where there is overlapping in a concrete instance, the two remedies could have been taken at the same time, but for the provisions of section 28(4). The two remedies are not in their nature mutually exclusive, and the grant of a concession to the assessee in the form of section 28(4) does not alter the situation.

In view of this pronouncement, it is not considered necessary to disturb the substance of section 28, but section 28(4) has been made into a separate section, in order to bring out its true function.

The words "in the course of any proceedings" also came up for consideration in the case cited above. The High Court noted that the practice is, that when an Income-tax Officer finds that an assessee has concealed his income etc., he estimates the concealed income, adds it to the income returned and levies tax on the entirety of the income as thus determined in his assessment ordered. At the same time he issues notice to the assessee to show cause why a penalty should not be levied under section 28(1) and (2). But the assessee may not have been heard and no final conclusion is reached at that stage. The assessment is completed and a demand is made for the tax, and

¹ *Sirgaminatha Moopanar and Sons Vs. I.T.O., II Circle, Madurai and an other* (1955) 28 I' R. 601.

the Income-tax Officer waists until the appeals, if any, as regards the assessments, are over. After obtaining the assessment figures as finally determined, the Income-tax Officer pursues the notice already issued, resumes the penalty proceedings, hears the assessor and passes an order in proper cases under section 28(1) after obtaining an approval of the Inspecting Assistant Commissioner. "This practice", the High Court observed, "appears to be fair to the assessee and not contrary to the language of the enactment". In the view of the High Court, "the proceedings for the levy of a penalty must be initiated by an authority when such authority was in seisin of the assessment or other proceedings in the course of which it is found that the assessee has brought himself within the mischief of section 28. When once the notice has been issued, the jurisdiction of that authority to continue the proceedings is not dependent upon the continuance of other proceedings in the course of which the penalty proceedings came to be initiated."

The purport of the words in question has been clearly explained in this judgment and it does not appear necessary to make any change in the language.

Clause 280

Existing section 28 has been broken up in the draft in the following manner —

- (1) The general power to impose penalty has been dealt with first
- (2) The special provisions applicable to firms contained in section 28(1) Proviso (b), are dealt with next
- (3) The special provisions contained in other parts of the Proviso, applicable to other cases, are placed next
- (4) The special provision applicable to partners is placed at the end

The words "three thousand five hundred rupees" in existing section 28(1), Prov (a) have been replaced by suitable words linked up with the taxable minimum which may vary from time to time (Cf para 196, I T C Report, 1948)

Notes to clause 281

No comments are needed

Notes to clause 282

Existing section 18A(9) has been incorporated in this clause. The main para of that sub-section has been embodied in the earlier portion of the draft clause, the changes made being consequential on the breaking up of existing section 18A itself, the remaining portions of which have, "n

the draft, been placed in the Chapter relating to collection and recovery of tax.¹

The proviso to this sub-section has been placed in the latter half of this clause, with verbal changes which have been made in order to elaborate the provision and make its understanding easy.

Notes to clause 283

Sub-clause (1).—The words “or the other person on whom the penalty is sought to be imposed”, have, in the draft, been added to existing section 28(3), in order to make the provision comprehensive.

Sub-clauses (2) and (3).—No comments are needed.

Notes to clause 284

No comments are needed as to the drafting of this particular clause.

As to the attack on the constitutionality of section 28 read with sections 51 and 52 of the existing Act, see notes to the clause incorporating section 28(1).²

CHAPTER XXIII

OFFENCES AND PROSECUTIONS

Notes to clause 285

This clause does not require any comments. As to the constitutional position relating to existing sections 51 and 52 read with existing section 28(1) and section 28(4), see notes to the clause incorporating section 28(1).³

Notes to clause 286

The existing section 52 provides that if a person makes a false statement in verification under certain sections, he should be punishable etc. The existing section gives a long list of the various sections under which verification is made; but it does not, appear to be necessary to give a list of such sections.

Verification under any provisions of the Act should obviously come within the purview of this section. The flaw inherent in giving a list is that the list may not be exhaustive and may, moreover, require to be amended whenever an amendment introduces a new section requiring verification. The draft clause, therefore, uses the words “any verification under this Act”.

Notes to clause 287

No comments are needed.

¹ *Vide* Chapter XVII, Clause 215 *et seq.*

² Notes to draft clause 280.

³ Clause 280.

Notes to clause 288

The words 'on conviction before a Magistrate' have been added in existing section 54(2), on the lines of the language of existing section 51, last part

CHAPTER XXIX

RECOGNISED PROVIDENT FUND

Notes to clause 289

General—The provisions contained in the Chapters on Recognised Provident Funds and Approved Superannuation Funds have in some case bearing on other section also. The scheme adopted in the draft is to make a reference, in other sections to the provisions relating to such funds, wherever convenient. Though this entailed some repetition, it has been done for facilitating reference.

Clause 289—Existing section 58B has been reproduced here. The only change made is the addition of the proviso in sub-clause (1). Section 9 of the Employee's Provident Funds Act 1952 deems a provident fund established under a scheme in accordance with that Act to be a recognised provident fund under this chapter. So far as the funds established under such schemes are concerned this deeming provision is sufficient. But certain provident funds under that Act have been exempted by Government under section 17 of that Act, from the operation of the scheme. Such provident funds would not be covered by the deeming provision and it appears to be desirable to enable a relaxation of the conditions in their case. The proviso is intended to achieve this object. [Such provident Funds have to fulfil the condition laid down in section 58 of the Employee's Provident Fund Act and those conditions are strictly in accordance with the conditions prescribed by section 58(c)]

Section 58B(4) dealing with appeal, has been placed in a separate clause

Notes to clause 290

Existing section 58C has in the draft been broken up so as to separate the conditions from the provisions for relaxation of the conditions. The conditions are incorporated in this clause while provisions relating to relaxation are placed in a separate clause.

Notes to clause 291

General—All provisions in the nature of relaxation of conditions for recognition of Provident Funds have been collected together in this clause.

Sub clause (1)—Existing section 58C(1)(a) proviso has been incorporated here. The concluding words "notwithstanding that a proportion not exceeding 10% of the employees is employed outside India", in the existing section,

really mean that the proportion of employees employed outside India should not exceed 10%. The wording has, therefore, been altered to bring out the intended meaning.

Other changes are consequential on the breaking up of section 58C into conditions and provisions for relaxation.

Sub-clause (2).—Existing section 58C(1), (b), proviso, refers to the National Service (European British Subjects) Act, 1940 and the National Service (Technical Personnel) Ordinance, 1940. These references have been replaced in the draft by the words “any law for the time being in force”, which are more comprehensive.

Other changes are consequential.

Sub-clause (3).—The changes made are consequential on the breaking up of section 58C and combining of section 58C (d), Proviso and latter part of section 58C (1) (g).

Sub-clauses (4) and (5).—No comments are needed.

Notes to clause 292

No comments are needed.

Notes to clause 293

This is new. Sums paid by the employer as contributions towards a recognised provident fund should be allowed to be deducted in computing the employer's income.¹ Hence this clause.

Notes to clause 294

No comments are needed.

Notes to clause 295

No comments are needed.

Notes to clause 296

General.—Existing section 58G, sub-section (2), has been embodied in this clause. The proviso has been expressed as an item of the main sub-section.

Section 58G(2) talks of exemption from the payment of income-tax and says that the accumulated balance shall be “excluded” from the computation of the employee's total income. It is thus a case of total exclusion and has been treated so in the draft.

So far as super-tax is concerned, the exemption in section 58G (2) was originally applicable to super-tax also, but the words “and super-tax” were omitted by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933). The reason for removing these words from this sub-section apparently was that the exemption for super-tax was dealt

¹ Cf. existing section 58R, main para, middle portion.

The provision in question was enacted only to make an adjustment necessitated by the course of legislation (see note below), and hence the aspect of payment receives a higher emphasis compared with the aspect of liability.

The Provident Funds Chapter was introduced in 1929. Section 58E provided for the inclusion of the annual accretion in the total income. Section 58F exempted the annual accretion from income-tax, subject to certain conditions. Though the intention of the legislature was, thus, to assess the annual accretion to super-tax, by the omission of section 58F from the sections not applicable to super-tax mentioned in section 58, the provisions of section 58F became applicable to super-tax. The annual accretion, therefore, remained exempt from super-tax also up to 1933.

The legislature noticed this defect in 1933 and rectified it by including section 58F in section 58. Simultaneously section 58G (1) was introduced and 58G (2) was made not applicable to super-tax. The resulting position is that though the accumulated balance is exempt from payment of super-tax, the employee receiving the accumulated balance has to make good the super-tax that he would have paid between 1929 and 1933.

Notes to clause 298

Existing section 58H has been embodied here. The section provides that at the time of payment of the accumulated balance, the trustees shall deduct therefrom any income-tax payable under section 58G (3). So far as this requirement is concerned, the words "in cases where section..... [58G (3)] applies," have been added in the draft, to make it clear that deduction is permissible only where the liability for payment of tax has arisen.

The existing section further provides for the deduction of any income-tax and super-tax payable on an employee's total income as determined under section 58J (3). This requirement does not appear to be intelligible. Section 58J (3) does not really apply at the time of payment of accumulated balance to the employee and is confined to the taxation, at the time of recognition, of sums transferred to the employee's account in the recognised provident fund. This requirement has, therefore, been omitted in the draft.

Notes to clause 299

Existing section 58J is incorporated in this clause. Sub-section (4) of that section has been incorporated in the clause dealing with relaxation of conditions¹.

No other comments are needed.

Notes to clause 300

No comments are needed.

¹Compare draft clause 291 (5).

Notes to clause 301

No comments are needed

Notes to clause 302

No comments are needed

Notes to clause 303

No comments are needed

Notes to clause 304

No comments are needed.

Notes to clause 305

"Recognised provident fund".—No change has been made in the existing definition. Section 9 of the Employees Provident Funds Act, 1952 (19 of 1952) provides that a provident fund established under a scheme under that Act shall be deemed to be a recognised provident fund for the Income-tax Act. It does not appear necessary to repeat this provision in the Income-tax Act, since some of the provisions in this Chapter (for example, withdrawal) may not in terms apply to such funds.

"Employer".—In existing section 58A, clause (b), the words 'maintaining the provident fund for the benefit of his or its employees' are applicable not only to the 'individual' referred to in item (ii) but also to the 'Hindu undivided family, company' etc., referred to in item (i). To make this clear, the substance of these words has been placed in the beginning of the definition.

Other definitions.—Do not need any comments

CHAPTER XXV

APPROVED SUPERANNUATION FUNDS

Notes to clause 306

No comments are needed

Notes to clause 307

Sub-clause (1).—In the opening lines, it has been provided that the superannuation fund must satisfy not only the conditions set out in the section but also the conditions to be prescribed by rules to be made by the Central Government. This addition has been made to secure uniformity with the corresponding provision relating to recognised provident funds [See existing section 58C(1), opening lines]

Sub-clause (2).—The proviso to existing section 58P is merely clarificatory. It has been embodied in sub-clause (2)

¹Cf notes to clause 317, 'General'

Sub-clause (3).—This is new and has been added to secure uniformity with the corresponding provision relating to recognised provident fund—see existing section 58C (2).

Notes to clause 308

It has been made clear that the application for approval is to be made to the Income-tax Officer by whom the employer is assessable.

The word “year” has been replaced by the expression “assessment year” or “previous year”, as considered appropriate.

Notes to clause 309

General.—Existing section 58R and 58S have, for the sake of clarity, been broken up so as to deal separately with the following :—

- (1) Income from investment.
- (2) Employer's contribution—deduction for.
- (3) Employee's contribution—when exempted.
- (4) Contributions paid to the employee—when deemed to be income.
- (5) Deduction of tax on contributions paid to an employee.

Existing section 58R, relating to exemption in respect of superannuation funds, combines a number of provisions. These provisions embody exemptions falling under various categories. For example, the opening lines direct that income derived from investments of such funds shall be “exempt from payment of income-tax”; while the subsequent lines provide that “any sum paid by an employer by way of contribution shall.....be deducted in computing the income.....” It is obvious that the first exemption is in the nature of an exclusion from total income, while the second is a deduction for expenses. In order to bring out clearly the nature of the various exemptions contained in existing section 58R, its various portions have, in the draft, been allocated to various clauses according to the topic dealt with, thus—

- (i) the opening lines relating to income from investment etc., have been embodied in this clause. That provision applies in respect of super-tax also under existing section 58. The provision is more in the nature of exclusion from total income and should be treated on the same lines as income received by trustees on behalf of a recognised provident fund. see existing section 4, sub-section (3), item (ix) ;

- (ii) the middle portion of section 58R main para dealing with sums paid by employer, has been placed in a separate clause,
- (iii) the last portion of section 58R main para has been dealt with in another clause¹ with certain drafting changes which are discussed below, the first Proviso to section 58R has also been incorporated in that clause²,
- (iv) the second Proviso relates to employer's contributions and has been placed along with the middle portion of the main para³

Section 58R says any sum paid by an employer or an employee by way of contribution shall in the case of an employer be deducted in computing his income and in the case of an employee be treated for all the purposes of this Act as if it were a sum to which the provisions of section 15 apply,

Provided that no such exemption shall be allowable to an employee in respect of any sum which is not an ordinary annual contribution

The existing language at first reading would mean that both the sum paid by the employer and the sum paid by the employee are to be allowed as a deduction in the case of an employer and that similarly both the sums are to be allowed exemption in the case of an employee. But obviously this is not the intention. Only a sum paid by the employer is to be allowed as a deduction in the employer's assessment and similarly only a sum paid by the employee is to be allowed deduction in the employee's assessment. Since the case of the employer and the case of the employee have in the draft been treated at different places the need for any clarification does not arise.

Notes to clause 310

See notes to the proceeding clause⁴

Notes to clause 311

The words 'in the previous year' have been added for the sake of precision and the place of the first Proviso to existing Section 58R is in the draft taken by the words at the end in so far as such sum is an ordinary annual contribution

The general scheme of existing section 58R has already been dealt with⁵

¹See draft clause 310

²See draft clause 311

³Vide draft clause 310 Prov

⁴Clause 309

⁵See notes to clause 309

Notes to clause 312

Existing section 58S (1) provides that where any contributions are "repaid", to an employee, the amounts so repaid shall be deemed, for the purpose of income-tax, the income of the employee for that year. The words "repaid" would, at first sight, seem to suggest that it is only the employee's contributions that are intended to be covered by these words. But it seems that the employer's contributions should also be covered, because there does not appear to be any reason for excluding employer's contributions; the word "repaid" was probably used in a wider sense.

The sub-section does not make any exception for contributions repaid on death or termination of employment. Existing section 58S (2) however shows that payment of contributions to an employee on death or termination of employment does not come within the scope of this section. The two sub-sections should run in harmony with each other.

The language of the provision has, therefore, been altered on these lines.

The words "of that year" have been replaced by the words "of the previous year in which it is so paid to him", for precision.

Notes to clause 313

As pointed out in the notes to the clause corresponding to existing section 58S (1), section 58S is intended to apply to contributions both of the employees and of the employer¹. The necessary change has been made in this clause also.

Notes to clause 314

No comments are needed.

Notes to clause 315

No comments are needed.

Notes to clause 316

Existing section 58V has been embodied here with the following changes :—

- (1) It has been made clear that the information is to be supplied by the trustee to the Income-tax Officer within "not less than twenty-one days". This will avoid the raising of any question as to what is meant by the words "within twenty-one days".
- (2) Clauses (a), (b) and (c) of this section, which elaborate the particulars that will be required by the Income-tax Officer, have been omitted, as the rule-making power now conferred² enables rules to be made on these matters.

¹See notes to clause 312.

²*Vide* draft clause 317.

Notes to clause 317

General—This is a new clause and is intended to give effect to the following recommendations of the Income-tax Investigation Commission' —

'70 If all the requirements of section 58-P are satisfied, it is doubtful if the Central Board of Revenue can refuse to recognise a superannuation fund. The power to impose conditions would probably have reference only to the three eventualities mentioned in the proviso and not in other circumstances independent of these contingencies.

The provisions of the Income-tax Law in respect of superannuation funds should, as far as possible, be brought into line with those relating to Provident Funds. It is difficult to see why the power given to the Central Government to make rules as in Section 58L (2) should not be repeated in the case of Superannuation Funds. This lack of power to make rules is a serious drawback in the scheme of Superannuation Funds under the Income-tax Act, of which unfair use can be made."

'72 Suitable amendments may be made in the Indian Income-tax Act restricting the maximum limit to which the contributions by the employee and employer may be made to 25 per cent of the employee's salary

Sub-clause (1)—Cf existing section 58L (1) relating to recognised provident funds

Sub-clause (2)—Para (a)—Cf section 58L (2) (a)

Para (b)—relates to the returns etc. referred to in section 58R as embodied in the draft

Para (c)—see para. 72 of the report of the Income-tax Investigation Commission quoted above. The maximum has been left to be prescribed by the rules, in order to secure elasticity

Para (d)—Cf section 58L (2) (c)

Para (e)—Cf section 58L (2) (d)

Para (f)—is intended to enable withdrawal of recognition. This power will be in addition to that enjoyed under section 58-0 (1) latter part.

Para (g)—Cf section 58L (2) (e)

Notes to clause 318

Sub-clause (c)—The word 'earnings' has been replaced by the words 'income chargeable under the head salaries', which are more appropriate.

¹IT C. Report, 1948 page 219 for detailed discussion, see para graphs 170-171 of that Report.

²Cf Report of the Income-tax Investigation Commission, para. 171, observation beginning with 'Secondly' at page 74.

CHAPTER XXVI

MISCELLANEOUS

Notes to clause 319

This is new. It seems desirable to make it clear that income once charged to tax should not again be charged to tax in the hands of the same person. This safeguard seems to be necessary, in view of the fact that an item of income may be chargeable either on the basis of its accrual or on the basis of its having arisen or on the basis of its actual receipt, within a particular period. In other words, the chargeable periods may vary according to the basis on which the tax is sought to be assessed.

Notes to clause 320

It has been made clear that even in the case of a local authority or company, service may be made on its principal officer. The definition of "principal officer" is applicable to local authorities and companies also.

Notes to clause 321

Sub-clause (1).—This is new. Since the family will not be in existence after partition, a provision for service of notices in respect of proceedings pertaining to the disrupted family appears to be necessary and has been incorporated in this sub-clause. The Supreme Court has held¹ that in such cases the notice need not be given to all members. This view has been followed in the draft, treating, however, a notice under section 34 in a different manner².

This draft sub-clause will apply only where an order recording a finding of total partition is passed. In cases of partial partition, the family continues in respect of undivided property; (if the partition is partial as regarding persons, the remaining members will continue joint); and notices can be served in the usual manner, and, no special provision is necessary to the effect that the notice in such cases must be served on all the members of the family. (In cases where some of the members went out of the family, the members so separated must of course be served. But this need not be provided for).

Sub-clause (2).—This is new and is intended to provide for the service of notice in the case of a dissolved firm or association.

Notes to clause 322

This clause does not need any comments.

¹ *Laxmi Narain Bhadani V. CIT*, (1951) 20 ITR. 594(SC).

² Cf. I. T. I. C. Report, 1948, page 155, paragraphs 351, 352.

Notes to clause 323

This is new. It is desirable that documents placed on the file of an Income-tax authority should bear proper endorsement so that their tracing and identification may be facilitated whenever a reference to them becomes necessary. It is also desirable that where an Income-tax authority bases any order on any document, the document shall expressly be referred to in the order, so that there may be no difficulty in understanding the basis of the order. The draft clause is intended to achieve this object.

Notes to clause 324

Sub-clause (1)—does not need any comments, except that existing section 61(1) and section 61(2) have, in the draft, been broken up so as to separate the details regarding various authorised representatives from the main provision authorising their appearance.

Sub-clause (2)—The various kinds of persons who can appear as authorised representatives have been listed in this sub-clause.

Items (i) and (ii)—do not require any comments.

Item (iii)—relating to lawyers has been redrafted so as to simplify the language. This category has been restricted to legal practitioners who can appear in a civil court. (Persons already in practice will not, of course, be affected).

As to item (iv), see notes below, under "Explanation".

The right of persons entitled to appear under the existing Act will be preserved by item (v), even though the persons are not qualified under the new Act. But it has been made clear that this right is available only where such persons were actually in practice before the new Act came into force.

Explanation—The definition of "accountant" has been brought into line with the Chartered Accountants Act, 1949. Persons who are neither Chartered Accountants nor authorised to audit the accounts of companies under section 226(2) of the Companies Act, 1956, are proposed to be excluded from the definition. Existing section 61(2) item (iii) enables a member of an association of accountants recognised in this behalf by the Central Board of Revenue to appear as an authorised representative. It is proposed to restrict the right, however, to chartered accountants etc. (Persons already in practice at the time of the commencement of the new Act will not of course be affected).

Sub-clause (3)—does not need any comments.

The abolition of this category was recommended even by the Income Tax Investigation Commission in its Report (1948) Para 240 page 107. The Taxation Enquiry Commission, however, was not in favour of any change. See its Report (1953-54), Vol II, Ch. XI, para 49-50.

Sub-clause (4)—Under existing section 61(3) the power to take disciplinary action against persons “other than lawyers or accountants subject to their respective professional bodies”, is vested in the Commissioner. It is proposed to transfer these powers to an authority whose constitution would be laid down in the rules’. The present provision authorising appeals to the Central Board of Revenue will of course, continue.

Sub-clause (5)—is merely a transitional provision.

Notes to clause 325

No comments are needed.

Notes to clause 326

No comments are needed.

Notes to clause 327

No comments are needed.

Notes to clause 328

The word “year” has been replaced by words “assessment year” for precision. In addition to income-tax, super-tax has also been added for the sake of precision.

Notes to clause 329

Sub-clause (1).—It has been made clear that the rules will be published in the Official Gazette.

Sub-clause (2).—Paragraph (c) is new and is intended to empower the Central Board of Revenue to make rules (i) for the registration of Income-tax Practitioners who are not lawyers or accountants and (ii) for the constitution of an authority to take disciplinary action against them’.

The changes made by the Finance Act, 1958, have been given effect to. Further, a provision for rules regarding income-tax verification certificates has been added, since it is felt that a statutory provision on the subject would be useful.

Sub-clause (3)—does not need any comments.

Sub-clause (4)—has been brought into line with recent legislative practice.

Existing section 60.

Existing section 60(1) authorises the Central Government to make exemptions, reduction in rates or other modifications regarding income-tax in certain cases. Sub-section (3) of that section, however, provides, that after the commencement of the Indian Income-tax (Amendment) Act,

¹ Cf. the Amendment Bill that was introduced in 1951 (which was allowed to lapse), printed in (1951) 28 I.T.R. 46, 47.

² *Vide* notes to draft clause 324 (4).

1939, this power will not be exercisable except for the purpose of rescinding exemption, etc. already made. The result is, that no new exemption etc. can now be granted under section 60, sub-section (1). In view of this, this provision has been omitted in the draft.

So far as exemptions already granted are concerned, the question of their retention for assessments under the new Act will have to be considered by the Government, when the transitional provisions are drafted (Cf note regarding repeal etc below)

So far as assessments for any period prior to the commencement of the new Act are concerned, exemptions already granted under section 60(1) should, of course, continue to have effect, and the power to cancel them under section 60(3) should also continue (Cf Note re: repeal etc below)

Note on Repeal and transitional provisions

(At first draft clauses on repeal and transitional provision were prepared in the Commission, but later it was felt that it need not be done in the Commission and might be left to the Ministry of Law)

When the new Act comes into force, the existing Act, i.e., 1922 Act will of course, cease to apply. While drafting the repeal clause, it would be desirable to consider which of the following courses should be adopted.—

- (1) Absolute repeal of the existing Act—This may not be feasible, since it would necessitate innumerable saving provisions and may cause inconvenience also
- (2) Formal repeal of the existing Act with a provision that so far as the assessments etc. for assessment years prior to the commencement of the new Act are concerned the existing Act will continue to apply. This seems to be the method adopted in section 13 of the Finance Act, 1950 (25 of 1950) and section 6 of the Taxation Laws (Extension to Jammu and Kashmir) Act 1954 (41 of 1954) which, while repealing the old laws, preserve the old laws for the purpose of "levy, assessment and collection" of income-tax, etc. for past years

Section 527 of the U.K. Act 1952 follows the same method, sub-section (1), main para, repeals the previous laws as listed in the twenty-fifth Schedule, but the proviso enacts that the provisions of the new Act "shall not apply to income-tax for the year 1951-52 or any previous year of assessment and the provisions of the enactments mentioned in the twenty-fifth Schedule shall continue to apply for tax in any such year to the same extent that they would have applied thereto if this Act had not been passed"

Section 2 of the Australian Income-tax and Social Service Contribution Assessment Act, 1936-1953, while repealing the enactment concerned (*vide* the main paragraph), provides (*vide* first proviso) that the Act repealed by this section, shall continue in force for *all purposes* in connection with income-tax payable for any financial year prior to the financial year commencing on the 1st January, 1936.

[It may be noted that the saving embodied in the various Acts referred to above varies in each Act. Thus the Indian Acts i.e., Finance Act, 1950 and the Act relating to Jammu and Kashmir, save the old law for *levy, assessment and collection* of tax etc. The U.K. Act saves the old law for *tax*. The Australian Act saves the old law "*for all purposes*".]

(3) Another alternative would be, not to "repeal" the existing Act, but to provide that it "shall cease to apply". (A clause framed on these lines would not of course, attract the provisions relating to repeal in the General Clauses Act and they will have to be specifically incorporated in the repeal clause).

A precedent for this will be found in section 130 of the Canadian Income-tax Act which, instead of effecting a specific repeal, merely provides that provisions of the Income-tax War Act (i.e. the earlier Income-tax Act of Canada) "are not applicable to taxation years after the 1948 Taxation Year".

Title I, sub title A, section 1, U.S.A. Internal Revenue Code, (U.S.A. Statutes 1934 Part I p. 683) provides that the provisions of the new Act shall not apply to assessment years commencing prior to 1st January, 1934, and income-tax for assessment years prior to that date shall remain unaffected by the new Act and shall continue to be governed by the applicable provisions of the old Act.

If this third alternative is adopted, notifications and orders etc. can be issued under the old Act on all matters in respect of assessment years prior to the commencement of the new Act.

(It may be stated here that the repeal clauses in section 53 of the Indian Income-tax Act, 1918 (7 of 1918), section 8 of the Indian Income-tax Act, 1920 (19 of 1920) and section 68 of the Indian Income-tax Act, 1922 (11 of 1922) might not be very helpful in drafting the repeal clause. These Acts straight-away repeal the old Act and add that such repeal shall not affect the liability of any person to pay any sum due under the old Act.)

¹. Hence, assessments in Canada still continue to be made and disputes litigated and under the old Act in respect of pre-1918 income. *Vide* taxation, Income-tax Law, 1949, Second Supplement.

Rule 5

The changes made are all of a drafting nature, and do not affect the substance of the existing law and practice

Para (a) —The existing Schedule, Rule 6, says that the balance disclosed in the accounts is to be adjusted so as to exclude from it any expenditure "other than expenditure that may under section 10 be allowed for in computing the profits etc of a business" It is only expenditure that is excluded, deduction for depreciation is, not, it seems, to be questioned, and must be allowed as entered in the accounts' Para (a) is intended to make this clear

(It does not appear to be necessary to make any similar specific provision for deductions in the nature of loss on resale of assets etc, since disputes regarding the quantum of such deductions are not likely to arise frequently)

See also notes to Para (b) below.

Para (b) —Depreciation having been provided for in sub-clause (a), it becomes possible to use the wide wording adopted in this sub-clause, viz., that all "deductions" not allowed under section 10 should be added back

The additions made by draft paragraphs (a) and (b) could have been made in the draft for life insurance also but it has not been considered necessary to make such changes there, for two reasons, first, the existing rule 3 is lengthy enough, and secondly, since the bulk of life insurance business will now be carried on by the Life Insurance Corporation, a statutory body, the need for any detailed clarifications will not be felt

Para (c) —This merely simplifies the latter half of existing schedule, Rule 6, by incorporating the provisions of existing Schedule, Rule 3(b), so as to render the reference to that rule unnecessary

Rule 7

The definition of "preceding year" has been omitted it is covered by the definition of "previous year" as adopted in the draft

The definition of "securities" has been replaced by a definition of "investment"

Notes to the Second Schedule

The detailed procedure for recovery of tax has been given in this Schedule The draft is mainly based on the provisions of the Bengal Public Demands Recovery Act

1913, which appears to be the most comprehensive of the Provincial and State Acts on the subject. Slight changes of substance have been made at one or two places, and the provisions have been embodied in a re-arranged form.

Notes to the Third Schedule

The Schedule does not need any comments. The provisions relating to attachment by the Collector will apply to distraint etc. effected by the Income-tax Officer himself.

Transitional provisions

A number of orders, notifications etc issued under the existing Act, will have to be continued for the purposes of the new Act, until the appropriate action is taken under the new Act. The actual form of the clause on the subject would, of course, depend on how the repeal clause is framed. If the usual repeal clause is adopted, section 24 of the General Clauses Act would have the effect of continuing appointments, notifications, orders, schemes, rules, forms, bye-laws etc. But still a number of other things which do not fall under section 24 of the General Clauses Act would have to be dealt with. If straight-away repeal is not effected, the continuation clause will, of course, have to mention orders, notifications and, rules etc also.

It may be necessary to make some provisions as to how far the Act is retrospective. Section 129(6) of the Canadian Income-tax Act, may be compared.

Provision for ensuring that income taxed under the existing Act is not taxed again under the new Act might also be necessary.

Since the Tribunal is proposed to be abolished, it may be necessary to make elaborate provisions in respect of proceedings pending under the existing Act before the Tribunal. These proceedings may include not only appeals, but also applications for making a reference under section 66 of the existing Act. It will also be necessary to provide how references pending in the High Court under section 66(2) or section 66(3) should be dealt with, and also as to the authority which should carry out the decisions passed by the High Court on these references. Where an application under section 66(1) has been rejected before the commencement of the new Act, it would also be necessary to provide that the assessee or the Commissioner may apply to the High Court as regards the merits or as regards the issue of limitation. Provision will also have to be made as regards decisions given by the Commissioner or A A C (before the new Act) in respect of which an appeal could have been filed to the Tribunal if it had not been abolished.

The usual clause relating to power to remove difficulties in achieving the transition or giving effect to the provisions of the Act will also have to be embodied.

Notes to First Schedule

Rule 1

The existing Schedule uses the expression "year" and defines it in rule 5(1). In the draft, however, the expression "previous year" has been used. The definition of "previous year" as adopted in the draft deals specifically with insurance business so that the expression "preceding year" need not be used in the substantive provisions.

Instead of the expression "income profits and gains", the shorter expression "profits and gains" has been used, on the lines of the existing section 10.

Rule 2

Slight changes have been made to simplify the language. For example, the existing Schedule, rule 2 proviso, clauses (a), (b) and (c), repeat the word "plus". This has been replaced by the words "aggregate of the following".

Rule 3

The following drafting changes have been made:—

1. The first proviso to the existing Schedule, rule 3(a), has been omitted, as it was applicable only to the "first such computation" made under the rule.

2. The second proviso to the existing Schedule, rule 3(a) says that if any amount reserved for policy holders is not paid to or expended on behalf of the policy holders, then the proportion previously allowed as a deduction is to be treated as a part of the surplus. The proportion has been described as "one-half or four-fifths as the case may be". The reference to "one-half" in the Act is not intelligible on first reading, because the deduction allowed is four-fifths under the main para of existing Schedule, rule 3(a). The text of the rule, as it stood before the amendment made by Act 25 of 1953, contained the words "one-half" and the intention apparently was to cover also cases where a deduction was allowed before the amendment of 1953.

Ordinarily speaking, by the time the new Act comes in force cases of deductions under the existing Act as it stood before 1953 will have been exhausted. However, as a matter of caution, the reference to "one-half" has been retained in the draft.

The words "under this Act or under the Indian Income-tax Act, 1922" have, however, been added in the draft, in order to deal with cases where a deduction under the existing Act is to be adjusted in the surplus under the new Act.

3. Existing rule 3, clause (b), uses the words "securities or other assets". But the appropriate word seems to be "investments"; that is the word used in the existing Schedule, rule 6, last sentence. The draft, therefore, uses the word "investments".

4. Existing Schedule, rule 3, clause (c), has been incorporated in the draft sub-clause (c), with minor drafting changes made for the sake of precision.

Rule 4

This does not need any detailed comments.

NOTE BY DR N C SEN GUPTA

I am in agreement with the lines of approach to the Income Tax Act adopted by the Report. I appreciate and agree generally with regard to the important provisions.

There is one thing however which I must repeat once again. I think it would have been an advantage if the consideration of the Income Tax Act had been adjourned until the Tyagi Committee had formulated their conclusions. I have been informed that the Chairman thought otherwise. Because he expressed the opinion that the Tyagi Committee has nothing to do with these proposals. I shall clear up the matter.

Income-tax is now only one of a number of personal taxes which as things stand have to be assessed by the Income Tax Officer. The result is that there is nothing to show that it will be the same Income Tax Officer who will assess a person—(1) for income and super tax (2) for expenditure tax (3) for wealth tax and (4) for Estate duty. But assessment proceedings must necessarily involve an examination of the accounts of the assessee for each of these purposes. The same account will have to be gone through in the Tax Office not once for all but separately and not necessarily by the same Income Tax Officer. It would be not only convenient but almost necessary if the whole thing could be taken together in the case of a person who has to pay all these separate taxes or more than one of them. Each assessment proceeding will be separately started according to the procedure laid down in the separate Acts and necessarily the same accounts will have to be examined in each case. Now the Tyagi Committee can evolve a measure by which the integrated taxes could be assessed in the same office for each person and by a simpler procedure. It would be an undoubted advantage. But it is not possible now to suggest in connection with the Income Tax Act how this can be done or how the separate procedures of these several Acts can be integrated or amalgamated. It would seem therefore that my suggestion to consider the procedure of the assessment of income tax after the Parliament has finally decided on the integration or otherwise of the proceedings on the report of the Tyagi Committee would be advantageous. Without that it may very well be that all our labours upon the Income Tax Act would be

With regard to the content of the Report I will to one or two matters only. The Report takes into account all the shortcomings of the present procedure and it fusing mode in which it has been laid down in the Act it seeks to safeguard the interest of the tax payers adequately. I am in full sympathy with the criticism that has been made and the lines of approach to the long-drawn proceedings of income tax assessment. The present features of taxing all round amount to an onerous and hardship to small assesses. There are open wide gaps for escapin

of the tax by sufficiently resourceful and rich parties. It is true that the assessee has got to be safeguarded against oppression and at the same time, it should be seen that the tax is not evaded by rich parties. For this purpose, I am afraid, the procedure in the present Income Tax Act is not adequate. The draft report attempts to make several efforts to remedy this defect. But I do not quite agree with its treatment to the question of evasion. The amendment suggested in section 34 seems to me to be generous to the assessee. But we have got to see whether it does not become too generous to a wily evader at the cost of the honest tax-payers who have to bear additional burden. I agree that there ought to be a limit to the period for which the proceedings for taxation could be re-opened. Whatever limits are fixed, there ought to be a general principle laid down that if escape from assessment or under-assessment has been shown to be due to any dishonest or fraudulent practice of the assessee, there ought to be no limitation to re-open the proceedings. On the other hand, the limitation in ordinary cases ought not to exceed what is now prescribed under the Act.

With regard to the procedure of assessment and appeals, I agree with the proposals made. But I am not sure that the members of the Committee have given adequate consideration of the principles in French Law. Under that Law, in the case of assessment and realisation of provincial taxes, the matter is primarily within the jurisdiction of administrative officials. But it is provided that if any question of title is raised before the matter receives the sanction of the Ministry of the Interior, the Administrative Officer-in-Charge of the proceedings has to refer it immediately to a Civil Court after which the proceedings take the form of a Civil suit. Something similar to this is to be found in a Bengal Act, the Estate Partition Act. Under that Act appeals to the Civil Court are strictly limited. But if a question of title is raised in any stage of the proceedings, the Collector carrying on the proceedings has got to stay the proceedings and refer the parties to the Civil Court. I think some procedure like this might be conveniently provided for in the case of income tax assessment. There are some questions which would ultimately go from Civil Court upto the High Court even under the present Act. If such questions are raised at an early stage of assessment, the law may provide that the matter must be referred to the Civil Court and assessment proceedings stayed. Otherwise the assessment proceedings would be regarded as purely administrative—though under the strict control of the superior Administrative Officers, represented in France in the Council d' estate.

With further reference to the Income Tax Act in the proposals before the Tyagi Committee, I wish to add a few words with reference to my plea for the simplified and integrated procedure in the assessment of all personal taxes. It will be remembered that the new personal taxes have